

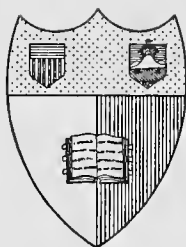


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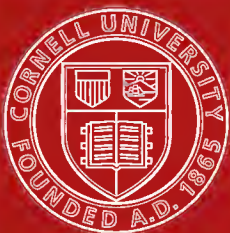
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LIFE OF  
WALTER QUINTIN GRESHAM  
VOLUME II





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*H. Q. Gresham*

WHEN HE BECAME SECRETARY OF STATE

# LIFE OF WALTER QUINTIN GRESHAM

1832-1895

By  
MATILDA GRESHAM

IN TWO VOLUMES

WITH PORTRAITS

VOLUME II



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LIFE OF  
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1832—1895

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*VOLUME II*

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CHAPTER XXVII  
“WHISKEY RING” TRIALS

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BRISTOW MADE SECRETARY OF TREASURY—INTERNAL REVENUE FRAUDS—THE “WHISKEY RING”—GRESHAM BREAKS THE WHISKEY MEN’S DEFENSE—BREACH WITH GENERAL HARRISON—GRESHAM’S PRINCIPLE OF CONSTITUTIONAL CONSTRUCTION NOT APPROVED BY BENJAMIN HARRISON NOR SUPREME COURT—SUBSEQUENTLY UPHELD—THE COUNSELMAN CASE—BROWNLEE TRIAL—GRESHAM’S CLEMENCY.

THE second injury of his leg, and the close confinement to which Walter Q. Gresham subjected himself after going on the bench, undermined his health, and we spent the winter of 1874-1875 in California. Judge Rhodes, of the California Supreme Court, said he would resign and enter into a law partnership with Judge Gresham, if we would come to California to reside permanently.

But the spring of 1875 found us back at Indianapolis. For the next four years, until the repeal of the Bankruptcy Act in 1879, my husband, except for very short intervals, was steadily at work in court. He usually held court all through the summer, never adjourning before the middle of August. During this period he began court at 9 A. M. and seldom adjourned before six in the evening. Under

the Bankruptcy Act of 1867, all contested matters were required to be heard by the judge; the register duties were largely if not purely ministerial.

My husband had suggested to General Grant the advisability of making Benjamin H. Bristow, who was then United States District Attorney for Kentucky, Solicitor of the Treasury. General Grant liked General Bristow so well that he first made him Solicitor-General and afterwards, in 1874, promoted him to be Secretary of the Treasury. Major Bluford Wilson, United States District Attorney for the Southern District of Illinois, was, upon the request of General Bristow, appointed in June, 1874, Solicitor of the Treasury. Major Wilson was the brother of Major-General James Harrison Wilson, who had been in the early days of the war on General Grant's staff. During the days off from court my husband made trips to Washington. Long before they became public he heard the rumors about Secretary of War Belknap. Belknap had been his friend in the field. In April, 1875, Bristow told my husband that extensive frauds had been discovered in the Internal Revenue Department, which were then being secretly investigated.

General Henry V. Boynton, of the Associated Press, and George Fishback, one of the owners of the St. Louis *Globe-Democrat*, brought to Solicitor Wilson the first evidence of the existence of the "Whiskey Ring." Major Wilson immediately took General Boynton's and Mr. Fishback's evidence to Secretary Bristow, and with the sanction of his chief pressed the investigation and then the prosecutions. Aggressive and fearless, Major Wilson was a man after my husband's own heart.

The distillers and rectifiers of whiskey and high wines at Cincinnati, Evansville, St. Louis, Chicago, Pekin, and Milwaukee had for several years been defrauding the government of much revenue by a systematic system of bribing revenue officers, many of whom were active associates in the wide-spread conspiracy.

General Bristow and Major Wilson laid the matter before General Grant, who later, in a personal letter to Bristow, wrote his famous epigram, “Let no guilty man escape.” Aside from doing their duty, Secretary Bristow and Solicitor Wilson were General Grant’s loyal friends, but when they discovered the connection of the President’s private secretary, Orville Babcock, with the conspiracy, through a telegram in Babcock’s own handwriting, General Grant became first cold, then enraged, and afterwards said they were trying to smirch him. Nothing was further from their thoughts. General Grant claimed to believe in Babcock’s innocence. He was incensed when Babcock was indicted at St. Louis, and finally the breach thus occasioned led Bristow to retire from the cabinet. Early in the investigations my husband was summoned to Washington to use his good offices with General Grant. It was a delicate mission and for many reasons he did not want to go, but he felt it was his duty to do so. He found General Grant obdurate, and so reported to Bristow. But he told Grant that Bristow had his sympathy, was loyal, honest, and capable. On this visit to Washington, after my husband’s call on General Grant and report to Bristow, he conferred with Judge David Davis, and the two called on Bristow and advised him to resign, which he did not do.

Babcock’s acquittal by a jury before United States Circuit Judge Dillon in the United States District Court at St. Louis, aided by the charge of the judge and by every influence the press, the Chief Executive, and the soldier element could bring to bear in his behalf, confirmed General Grant in his opinion.

Judge Dillon’s instructions to the jury to find the defendant not guilty were but little short of peremptory. Patrick H. Dyer, now United States District Judge, then the United States District Attorney, General John B. Henderson and Lucian Eaton, assistants, were the only men in St. Louis, the newspapers said, who claimed Babcock guilty.

After a half century, looking back at the facts that authorized the indictment and were developed at the trial, "it is difficult," said Major Wilson, "to reconcile the verdict with Babcock's telegrams to McDonald and his intimacy with the other chiefs of the ring."

One of the best court stories I ever heard was how "Pat Dyer" closed his argument to the jury in the Babcock case, in December, 1875. He started in vigorously to present the case for the government, but soon met with objections from Judge Dillon as to his line of argument. As he progressed many of his assertions were flatly contradicted by the court, and finally, after an interruption, Pat said: "Gentlemen of the Jury, I want to tell you a story. Two years ago I went down into southwestern Missouri to visit an old friend and with him to hunt wild turkeys. My friend was an elderly man with an old smooth-bore, single-barrel musket loaded with buckshot. Soon we were on the trail of a flock of wild turkeys. My companion blazed away at the biggest gobbler in the flock, but the only damage done was to break the gobbler's left wing. Then there was a foot race between the old man and the gobbler, with me bringing up the rear. The gobbler led from the clearing to the timber. As the race proceeded the old man threw away his musket, canteen, and powder-horn so as to lighten ship, and was gaining on the gobbler, who was weakening from loss of blood, when the old man stubbed his toe over a sapling some one had cut down across the path and went down. The gobbler was soon out of sight behind the trees and underbrush by reason of a bend in the path. As he arose to his feet the old man said, 'I did not kill you, but, by God, you won't roost as high tonight as you did last night.' I thank you, gentlemen, for your attention." Then turning to Judge Dillon very deferentially, Dyer said, "Instruct the jury, Your Honor." Just short of a peremptory instruction to acquit was the gist of Judge Dillon's charge. Promptly there was a verdict of "Not guilty."

With Major Wilson in active command of the proceedings against the ring, the first acts were the seizures in April, 1875, of distilleries, rectifying houses, spirits, coal, and other tangible property at Cincinnati, Evansville, St. Louis, Chicago, and Milwaukee. A great many of the leading Internal Revenue officers, including the chief clerk of the Bureau of Internal Revenue, were finally convicted of being in the conspiracy. The seizures were made on the theory that the government had a lien on the property seized.

The first trial was at Evansville, Indiana, June 9, 1875. The government was represented by District Attorney Nelson Trussler, his assistant, Charles L. Holstein, and Major Wilson, as the special representative of the Treasury Department. The defendants, Gordon B. and John H. Bingham, who were ably defended by Charles Denby and General J. M. Shackelford, were charged with running the distillery at Patoka during the absence of the storekeeper. The only penalty in the event of a conviction was a fine of \$1,000, but because a verdict of guilty would be a break in the line of the ring, the case was vigorously defended and as vigorously prosecuted.

The local press at Evansville sided with the defendants. The Evansville *Courier*, in commenting on the charge of Judge Gresham to the jury, said it was most severe, leaving no loophole for escape. There was proof that the distillery was operated at night several hours after the storekeeper had gone home to bed. This neglect of duty on the part of the storekeeper, the defendants by their counsel claimed, could not be regarded as a violation of the statute by them. The charge was that the jury should not take into consideration the fact that the law was a strict one; that it was the duty of the distiller to see that the storekeeper was at the distillery while the distillery was operated; that knowing the storekeeper had left the distillery, it was the duty of the distiller to close down the distillery and

make complaint to the proper authority. "The law makes no exception and does not inquire as to the distiller's motives. Congress, in passing the act, knew what incentive to defraud the government there was in manufacturing whiskey, and therefore passed strict laws to prevent even an opportunity for defrauding the revenue." There was a verdict of "Guilty."

This charge to the jury Major Wilson made the subject of a special telegram of congratulation to the Secretary of the Treasury. It broke the defense all along the line. "And this pioneer trial and conviction," said Major Wilson, "greatly strengthened the hands of the government in later trials in Milwaukee, Chicago, and St. Louis."

Judge Blodgett had authorized seizures at Chicago and Judge Dyer at Milwaukee, but still the government was without certain important evidence necessary to enforce its liens for unpaid taxes, and to indict and convict. In every instance accurate accounts were kept by the distilleries of all their transactions. An inspection of these books would enable the government to get evidence that would complete its case.

In defining the law and enforcing the liens under the seizures, Major Wilson and Judge Gresham continued to be in the lead. The first proceeding was against Distillery No. 28, Evansville. The government was in possession of the distillery but could not dispose of it by sale until it had established by evidence that the Bingham had defrauded the government out of its just revenue by corrupting certain of the revenue officers. Furthermore, the Bingham intervened; that is, came into court and asked that their property be restored to them. They were represented by notable counsels, Charles Denby and General J. M. Shackelford of Evansville, and Harrison, Hines & Miller of Indianapolis.

Extended mention of these prosecutions is made because they show that the practical side in enforcing the just and legitimate powers of the government was never lost sight



of by Judge Gresham, and also show the tendency of the reviewing courts to be pedantic—to play upon words, thus to limit the powers of the government until finally, when the consequences of their own acts are brought home to them, they “distinguish” or depart from their original narrow, technical construction. All are familiar with the English maxim, incorporated into the Constitution of the United States, “that no man can be compelled to give evidence against himself.” To remove the embargo that this put on the government, State as well as National acts—that of Georgia before the Revolution—were passed. The National act, known as Section 860 of the Revised Statutes of 1875, provided that in the event that a party was required to make a disclosure that might incriminate him, this disclosure as evidence could never be used against him. It was in the “Whiskey Ring” prosecutions that Section 860 was first given effect by a Federal court, so far as the records disclose. Judges Gresham, Blodgett, and Dyer applied Section 860, and upheld its constitutionality in opinions that the Supreme Court at first refused to follow. Subsequently, when the consequences of the ruling were pressed home, the Supreme Court reversed itself. It was in these prosecutions that the differences between Judge Gresham and General Harrison first arose.

On June 25, 1875, on motion of the District Attorney for the District of Indiana, as was provided by sections of the Revenue Act of 1874, Judge Gresham ordered the safe of Distillery No. 28 opened. It was opened but found empty. The court then ordered the Bingham to produce in the courtroom at Indianapolis on September 14, 1875, the books, blotters, and journals regularly kept and those irregularly kept. The last mentioned showed the actual transactions of the distillery. The regular books were so incomplete that they were useless. To the production of the books irregularly kept, the Bingham by their counsel objected, because they said these were private papers.

It was further objected that Section 5 of the Act of 1874 and the order made in pursuance of it were invalid because in controvention of the Fourth, Fifth, and Seventh Amendments to the Constitution of the United States, "that the rights of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; that no person shall be compelled in any criminal case to be a witness against himself; and when the value of the property in dispute exceeds \$20 in value, be deprived of his right to trial by jury."

There was an extended argument and a carefully prepared opinion in which the court said:

The first Congress that sat under the Constitution, the Congress that proposed to the States the first ten Amendments to the Constitution, the Fourth, Fifth, and the Seventh here in question, provided by Section 15 of the judiciary act for the production of books and papers to be used as evidence in suits at law, and also as the Constitution had enjoined in order to collect revenue, passed an act creating the internal revenue system—a system that of necessity the history of all governments shows must be drastic and arbitrary in its nature, prescribing every step to be taken in the erection and management of a distillery. The government has, therefore, practically assumed control of the manufacture and sale of spirits; they [distillers] are required to keep books in which they are to enter daily all their business transactions with the utmost particularity. These books are at all times open to the inspection of the proper revenue officers and are popularly known as government books. If properly kept, they will show the exact amount of spirits produced, received, and removed on any given day. If so kept, they will correspond with their business books, and this correspondence ought to exist. No one can engage in the manufacture and sale of spirits without the consent of the government. This consent is obtained on certain terms and conditions. No one can be allowed to say that a distiller or wholesale liquor dealer has kept a private record of his transactions. His books and entries are quasi-public books and entries.

It is now too late to question the power of Congress in the

premises. If the so-called private books correspond with the distillery books, the Bingham's will not be hurt; if they do not correspond, then any incriminating entries they contain can never be used against the Bingham's in any criminal case, because the Act of Congress of 1868, Section 850, provides that the witnesses in all such cases should have complete immunity.

We are not here to try the criminal case. When it comes to that, there would be a jury trial. Besides, it is not a suit at law or in equity, but a proceeding *in rem* to collect the government revenue.

This opinion was read November 2, 1875, and an order entered that the order of July 28 stand; and in the event it was not complied with, the claim of the government would be taken as confessed and the Bingham's imprisoned for contempt.

November 12, 1875, the Bingham's, by their counsel, Harrison, Hines & Miller, withdrew their claim to the spirits in Distillery No. 28 and to the distillery itself and the claims of the government were confessed. Subsequently the Bingham's were indicted, plead guilty, and became witnesses for the government.

Eleven years later Judge Gresham's interpretation, and that also of Judges Blodgett and Dyer of Wisconsin, of Section 5 of the Act of 1874 as being constitutional, was rejected by the Supreme Court of the United States in *Boyd vs. U. S.* (116 U. S. 616) because it held that section provided for an unreasonable search in that it might subject a party to a forfeiture or a criminal prosecution to compel him to produce his books and invoices in a customs case. Little or no consideration was given to the Immunity Statute, Section 860 of the Revised Statutes. "It was the writs of assistance providing for the searches and seizures in 1761 that James Otis declaimed against," said Justice Bradley, "that gave rise to the Fourth Amendment to the Constitution of the United States." It was not the writs but the customs laws of Parliament that these writs were being used to enforce, that Otis attacked. Had these revenue

laws passed by the Parliament been passed by the colonial legislatures, Otis would not have objected, but would have championed their enforcement by writs of assistance or otherwise. So in 1890, in the Counselman case, in giving effect to the Interstate Commerce Act of February 4, 1887, Circuit Judge Gresham distinguished the Boyd case and upheld the constitutionality of Section 860, the Immunity Statute.

The Counselman case arose out of an investigation by a United States Grand Jury for the Northern District of Illinois as to whether the Rock Island, the Burlington, and the Santa Fe Railroad companies were violating the anti-rebate section of the Interstate Commerce Act. Charles Counselman, a Chicago grain dealer, who, after admitting he was a large shipper over the roads named, under the advice of counsel refused to testify further, and especially in response to questions as to whether he had received rebates, for the reason that his answers might tend to incriminate him. The Grand Jury reported to Judge Blodgett, who ordered Counselman to testify, because Section 860 granted him immunity against any future criminal prosecution. Again Counselman refused to testify, and again he was ordered to testify under penalty of a fine of \$500 and to stand committed until it was paid. On a *habeas corpus*, Judge Gresham sustained Judge Blodgett.

In 142 U. S., 547, the Supreme Court promptly and unanimously reversed Judges Blodgett and Gresham in the Counselman case, condemned what they and Judge Dyer had said in the "Whiskey Ring" cases, held Section 860 void as being in contravention of the Fourth Amendment, and consequently upheld Counselman's refusal to answer.

Then it was that the Chicago *Tribune*, in a page article, showed the price of grain at St. Paul, Omaha, and Kansas City; at Chicago, the great grain market and gateway to the East; the price at the seaboard, New York, and Baltimore; the rates on the railroads from the first named three

points to Chicago, to the seaboard; the rates from Chicago to the seaboard, New York, and Baltimore; and the price of grain at the seaboard, New York, and Baltimore. The difference in the price of wheat at Omaha and Chicago was much less than the freight rates between those points; the same was true as to St. Paul and Kansas City and Chicago; the same was true as to Chicago, New York, and Baltimore. Counselman was doing an immense grain business. He owned most of the elevators on the Rock Island and had a practical monopoly on its lines.

The *Tribune* article attracted wide attention. The inference was irresistible that Counselman was receiving rebates and that the railroad companies under investigation were guilty. The decisions that went to the length that the witness might refuse to answer because his answers would tend to degrade him in the eyes of his fellows, even if they would not subject him to a criminal prosecution, were absurd, because the witness who refused to answer, accused, tried, and condemned himself at the bar of public opinion. Congress passed another immunity statute differing not in principle from Section 860, and but little in words. At the first opportunity the Supreme Court sustained it.

In the "Whiskey Ring" trials at Indianapolis, including the two Bingham, thirty-one men were indicted by the Federal Grand Jury that met in that city on the first Monday in December, 1875. The indictments were for violating the internal revenue laws, for conspiracy, for bribery, and for receiving bribes. The latter was the charge against Hiram Brownlee, a young man of good family. Brownlee was one of the two who went to trial who were acquitted. He was defended by George W. Steele of Marion, Indiana, Brownlee's home; by his venerable father, who simply sat in the courtroom; by General Benjamin Harrison, and his partners, Messrs. Hines and Miller. It was this trial that evidenced the breach between Judge Gresham and General Harrison. The trial lawyer thought the trial judge not

only had been hard on the Bingham, but also that he disregarded the constitutional limitations on his judicial powers, while the trial judge afterwards criticized the length to which "a Presbyterian elder would go" in order to win a verdict. General Harrison was an elder in the First Presbyterian Church of Indianapolis.

The Brownlee jury was sworn to try the issue, Friday, the 14th of January, 1876, and after the opening statement by the government, was excused until 10 A. M. of Tuesday, the 18th, because the court was congested with an accumulation of bankruptcy business and motions for new trials in the case of those convicted. One of the convicted men was an old soldier. It had been thought the jury that tried him would acquit. He did not get a new trial but a sentence of two years in prison. Only one defendant, who was a soldier, was acquitted. All the others were convicted or plead guilty, and received sentences varying from two years in prison to three months in jail. The majority received jail sentences. Most of these sentences were imposed before the Brownlee trial was resumed on the 18th. Brownlee was the last to be tried. The pressure that was brought to bear on my husband in behalf of the defendants was terrific, especially in behalf of those who had been soldiers, and most of them were of that class. Much of the soldier element resented the prosecution as a reflection on their "Old Commander." Walter Q. Gresham could not quarrel with every man who approached him, and as no surveillance was kept on the jurors and they were allowed to go to their homes, all that was done was to warn them to allow no one to communicate with them. Even a layman can understand the advantage which the defense had. On the jury was a man who had been a major in an Indiana regiment, a follower of General Grant, and later, one of the 306 in the memorable convention of 1880. A member of the machine, forceful and fearless, that major never hesitated to put anything over. Many were the circumstances outside of the courtroom that



contributed to, if they did not make, the verdict in the Brownlee case, it was said. There never was any question about District Attorney Nelson Trussler, his assistant, C. L. Holstein, and the special counsel for the government, General Thomas M. Brown, doing their duty.

When, on the 18th, the Brownlee trial was resumed, General Harrison made his opening statement before the government began its case. He assailed in advance the man who was to be the government's chief witness, Gordon B. Bingham, one of the indicted defendants, and his client, and animadverted on the spirit to convict and the harshness of construction that sometimes crept into judicial proceedings.

In consideration of becoming witnesses for the government, the Bingham family were promised and granted immunity. Gordon B. Bingham, who was the first and chief witness for the government, testified that on a certain evening in Brownlee's room in the St. George Hotel in Evansville he gave Hiram Brownlee \$500 in cash. A telegram from Cincinnati from Gordon Bingham to George W. Bingham about Brownlee was admitted in evidence, and also a check of Gordon Bingham drawn on the Evansville Bank whereby he obtained the cash to hand to Brownlee. On cross-examination General Harrison led Bingham to say that when he gave Brownlee the second \$500 in Brownlee's room in the St. George Hotel in Evansville, Brownlee was putting on a pair of white kid gloves preparatory to starting to the wedding of Harry Veatch, the son of General Veatch, collector of internal revenue for that district.

General Veatch was the first witness for the defense. He gave Brownlee a good record and said Brownlee on one occasion had reported to him an error in one of the distiller's books. Harry Veatch was married to a certain Miss Babcock at an Evansville church on a certain evening. Henry Babcock, one of the groomsmen, said Brownlee, who also was a groomsman, came to the Babcock residence with

bare hands. Together they went in the carriage to get one of the bridesmaids. Returning to the Babcock residence they met Captain W. H. Kellar, another government officer and another groomsman, and Harry B. Veatch. They all said Brownlee's hands were bare, and that before starting for the church they had put on their white kid gloves. Brownlee had two pairs and when Captain Kellar burst one of his gloves Brownlee gave him one of his pairs.

At noon on Thursday, January 20, the defense was out of witnesses. At the urgent request of General Harrison, on the representation that Captain Kellar was on his way from Evansville, the case was adjourned over the afternoon and until the morning of the 21st. Meanwhile the jury was permitted to separate, but with the admonition that they were not to talk about the case nor suffer any one to talk to them.

Harry Veatch had testified that he saw Brownlee put on the gloves in one of the dressing rooms. Thus it was argued; Brownlee's denial was corroborated and Bingham's story discredited. Brownlee was not in the service of the government at the inception of the conspiracy. His appointment was due to political influences, and these influences were strong in his defense.

The instructions were fair to the defense unless it was in telling the jury that it was no contradiction of Bingham's testimony to show that Brownlee put on a pair of white gloves at General Veatch's residence. Where the white gloves were put on was not the controlling fact in the case. After telling the jury it was a rule of necessity that required the government to resort to an accomplice such as Bingham to get evidence, and that they might convict on such evidence properly corroborated, this language was used: "But such testimony should be received and weighed with great caution, for as a rule it is deemed unsafe to convict upon the testimony of such a witness." At the end of the charge the jury was also instructed, at General Harrison's

request, that they should take into consideration the good character the evidence showed Brownlee bore before the charges he then was under were made.

Brownlee, contrary to the predictions of the bystanders and newspaper men, was acquitted, and ever afterwards lived an exemplary life and became a judge on the bench in his home county. Even if the accused is guilty there is often wisdom in a jury exercising the pardoning power. The disgrace, anxiety, and travail of a trial are all the punishment some men need. When asked what he thought of the verdict, Judge Gresham said he was satisfied, and then it was that he made the remark that cut General Harrison to the quick. If the General was not very considerate of the Judge in opening the case, it cannot be said that the latter did not give the General's client every advantage as well as every right the client was entitled to under the law. In other words, instead of evening up on the client, the Judge restrained himself and took his fling at the lawyer.

It always made Judge Gresham more or less unwell to try criminal cases. It was also an unpleasant thing for him to have to sentence men to the penitentiary. One of Senator Voorhees' stories will illustrate this. The episode occurred during a jury trial in which the Senator was one of the counsel.

During the examination of a witness, a young physician, who had been indicted for stealing letters from the mail while acting as a clerk in a small post office on the Jeffersonville Railroad, was brought in by Mr. Bigelow, deputy United States Marshal. Judge Gresham suspended the examination for a moment and addressing the young man, said:

"Doctor, I have been informed that your child is dead and that you would like to go and be with your wife at the funeral, and that so far you have been unable to attend. Do you know of any one who will become surety for you?

"There is no one from my home who will or can give

the necessary bail, and I have no acquaintances or friends here in the city upon whom I can call."

After a little pause Judge Gresham said: "Doctor, if I will let you go upon your own recognizance to attend the funeral of your child, will you report back to the marshal when the funeral is over?"

The doctor timidly answered, "Yes."

"Well," replied the judge, "I am going to put you on your honor. I will allow you to go and be with your wife. How long a time do you want?"

"Four or five days," answered the prisoner.

"Well, take ten days," was the judge's answer, "and at the end of that time report to the marshal and your case will be disposed of."

The young fellow burst into tears and attempted to utter words of thanks, but the judge waved his hand for him to go and give his personal recognizance to the clerk, and turning to the lawyers conducting the trial, who had all been interested spectators of the scene, said quietly: "Gentlemen, you may proceed with the examination of the witness."

Senator Voorhees, who had been standing near by, approached him and said: "Judge Gresham, are n't you afraid that the young man you just let go, after the funeral is over, being surrounded by friends who may give him bad advice and tell him he need not go back—that he can just as well go away as not—may yield to such counsel and not return?"

The answer was, "I have frequently trusted men under circumstances somewhat similar but not just like this, and have never had a man go back on me yet." Then giving one of his earnest looks, he said: "Dan, I don't care if he never comes back, he shall go and bury his child." Then, pausing a second, he added: "He'll come back."

The young man came back, received a sentence which was suspended, and lived to a ripe old age, a respected

citizen. Many men who served “their time” were aided to get positions. One mistake does not necessarily render a man a criminal for life. Two of the men who helped open up the redoubt that night at Vicksburg had shown cowardice on a previous occasion, and according to the rules of war should have been shot. Instead, they were given light punishment and on that night proved the bravest of the brave.

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## CHAPTER XXVIII

### THE ELECTION OF 1876

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GRESHAM OFFERED REPUBLICAN NOMINATION FOR GOVERNOR—CORRUPTION IN INTERIOR AND WAR DEPARTMENTS—JUDICIAL POWER OF CONGRESS—GRESHAM SUPPORTS GENERAL BRISTOW'S CLAIMS FOR THE PRESIDENCY—POLITICAL TACTICS—OPPOSED TO THE USE OF BAYONETS AT SOUTHERN POLLS—THE HAYES-TILDEN CONTEST.

NOTWITHSTANDING the fact that my husband at no time lost faith in Grant's personal and official integrity, he turned to the nomination of Secretary of the Treasury, Benjamin H. Bristow, for the Presidency. And this, too, in the face of the probable failure of the Bristow movement. For on February 6, 1876, he wrote to his old law partner, "I believe we could poll more votes with Bristow than any one else, but I doubt if he can be nominated. It will be said against him, 'Why go to Dixie for a candidate when the North is full of good men? We want no man who has ever owned a slave.' Such talk will have effect in a convention."

Senator Morton had long been a candidate for the Presidency. He was in political control in Indiana and everything was being bent to promote his political fortunes. General Harrison was at this time an avowed candidate for the nomination for Governor of Indiana and was playing politics.

October 14 and 15, 1875, under the guise of a non-partisan soldiers' reunion, a political meeting was gotten up at Indianapolis by Governor Morton's friends. There was a great parade ending at the State House grounds, where Senator Morton said he had bade more than one



hundred regiments good-bye. He said to the men: "You were awkward then; to-day you marched like the veterans you are. I have seen nothing like it since the march of General Sherman's army down the Avenue at the close of the war." In the march through the streets of Indianapolis that October day there were remnants of more than fifty Indiana regiments in line. One mustered 350 men with flags and banners and bands. Before he concluded, Governor Morton admitted that he was waving the bloody shirt and that he was still against complete amnesty.

General Walter Q. Gresham was the only other speaker. "Reply," one paper designated his address. Being non-partisan on the surface, as a judge, Mr. Gresham was free to respond to an invitation to make an address.

After praising Governor Morton for his service during the war and his devotion to the soldiers, and rapping the man who stayed at home and made money, he gradually turned to the questions that concerned the honor and prosperity of the country's future.

The soldiers of Indiana cherish no feelings of hatred for their late enemies. They recognize them as brave and gallant foes. While they believe they were mistaken and misguided in their purposes, they are willing to concede that they were sincere and honest in their views. They do themselves no discredit in acknowledging that in all soldierly qualities they were their peers. The soldiers earnestly desire that all unfriendly feelings engendered by the unhappy conflict shall be forever forgotten, and they will rejoice to see the people of the South blessed with prosperity and happiness.

And then he used the language which he uttered in General Grant's presence at an army reunion in 1879 at Chicago, where he said that while the war legislated it did not destroy the States and local self-government, and deprecated the use of troops to sustain a State government.

Walter Q. Gresham was one of General Grant's truest and best friends, but gratitude and personal loyalty did

not demand that General Grant be followed when his confidence was abused and he was misled, but rather his tendencies should be resisted. In our next chapter we will show that General Grant, honorable as he was, came to see this.<sup>1</sup> For William W. Belknap, Walter Q. Gresham always cherished the warmest feelings of friendship. I have the letter from Belknap written from Washington and before General Grant was elected President, in which Belknap wanted a letter—practically a letter of introduction—from Mr. Gresham to General Grant, which he got. As well he might, Belknap died a heartbroken man. When other men turned the cold shoulder to the former Secretary of War after his fall, Walter Q. Gresham treated him with the greatest personal consideration.

To General Harrison's aspirations to be Governor of Indiana, Governor Morton and his friends proved hostile. Finally, on December 10, 1875, General Harrison wrote a letter to the *Indianapolis Journal*, withdrawing as a candidate for the nomination. Before the letter was published it was submitted by General Harrison to Judge Gresham, and the judge was offered the support of General Harrison and his friends if he would become a candidate. This was before the Brownlee trial. Offers of support were coming from all quarters. His former law partner was urging him to accept the nomination for governor, and complaining that he was heedless of his advice. His answer was that he could not in this instance do so, and besides he was too busy in court to give the matter the consideration the question demanded, so he would keep out of it. Finally, in February, 1876, word came from Governor Morton that Judge Gresham's nomination for governor would be acceptable to Senator Morton and his friends. But to anything that involved supporting Morton he was opposed, and the offer was declined.

At this time the Bristow movement was taking form. Bristow's former law partner, John M. Harlan, would come

<sup>1</sup> See page 469.

up from Louisville to confer with my husband, and sometimes he would go to Louisville to see Harlan. He would go Saturday evening and be back in court Monday morning. General Grant could not understand how men like Bristow and my husband could be loyal to him and at the same time insist on revealing the corruption of his faithless advisers.

With a woman's instinct Mrs. Bristow could see the outcome. With a sigh she said to me one day, "General Grant does n't believe Ben is loyal to him, but he is." She was thinking of what might have been the result had there been no break between her husband and the head of the administration. General Grant's resentment went so far, that he requested President Hayes to exclude Bristow from his confidence. Bristow's desire was not to be President, but to be a member of the Supreme Court. General Grant's request and a midnight caucus thwarted Bristow's ambition.

Had General Grant continued to trust Bristow, the reformers would have defeated Morton and Blaine. The investigation of Secretary Belknap's administration of the War Department and the Secretary's certain impeachment were brought to a close by President Grant's accepting Belknap's resignation, and the political domination of Senators Morton, Chandler, Carpenter, and Cameron, who had supplanted and driven out of the Republican party Sumner, Trumbull, and Schurz, and thus had become supreme. At this time my husband was saying: "If the probe is inserted to the core, the administration of the Interior Department by Delano will be shown to be as corrupt as that of the War Department under Belknap, and Robeson's conduct of the Navy Department will be found to be infamous." The fact that the Congressional investigations were not thorough and only skimmed the surface was conclusive to the reformers that Senator Morton and ex-Speaker Blaine were not proper men to be President. And the fact

that the men in control of Congress perverted or arrested its judicial powers was a reason why a man on the bench who always kept his judicial duties free from every outside influence, should use his judicial powers to the limit.

I know my statement will be questioned that Congress possessed or possesses judicial powers. As Walter Q. Gresham construed the Constitution, Congress possesses very important judicial functions. Investigations at which witnesses are summoned, testimony weighed, impeachments recommended and tried, are the very essence of the judicial power. And the possession by Senators Morton, Chandler, Carpenter, and Cameron of the power to investigate and impeach did not make the comparatively young judge hesitate to violate some of the proprieties of his position—if you please to put it that way—and support the only reformer in Washington. The account of the Whiskey Ring trials shows how a judicial question becomes a political one, or is often really a mixed question in which are involved political considerations. Although it involved going against General Grant and breaking relations with General Benjamin Harrison, Walter Q. Gresham went to the logical conclusion of his premises.

In a letter of the 12th of March, 1876, to his old partner, he wrote:

So far as I am concerned, I am ready for anything that I think will save the country from ruin. I have reached the point where I can bid defiance to political despotism and corruption. In short, I am for the country, I am openly advocating Bristow's claims, and I am the first man at Indianapolis that has really ventured that far.

Carl Schurz proposed that there be a meeting of the reform element in Cincinnati a short time before the Cincinnati Convention, for the purpose of coercing the Republicans into nominating Bristow. But this proposition was finally abandoned.

The *Journal* of Indianapolis was supporting Senator

Morton, and not a line would it allow in its columns favorable to Bristow; on the contrary, it depreciated him in every way possible. John H. Holliday and Major Richards in the Indianapolis *News* became advocates of the nomination of General Bristow, and they pressed his cause with great skill and force. At Mr. Holliday's instance, my husband wrote to his former partner, Thomas C. Slaughter, who was always facile with the pen, for editorials for the *News*. Noble C. Butler, then living at New Albany, also contributed to its columns.

The movement in Bristow's favor failed, but it prevented the nomination of either Blaine or Morton. Bristow might have been nominated had he been willing to make the required trades. One day Senator Chandler walked into Bristow's office in the Treasury Department and said, "We will nominate you if you will come along with us." Bristow promptly declined. In the convention, after the deal was made at midnight to nominate Hayes, Chandler started the break by changing Michigan's vote to Hayes. At this midnight conference it is said John M. Harlan was promised a place on the Supreme Bench, and he, as the head of the Kentucky delegation, started the Bristow following to Hayes. Pennsylvania did not get into the deal. Most of the independents and reformers, including Mr. Schurz and all of Bristow's friends, supported Hayes at the polls.

On the 24th day of October my husband wrote to his old partner:

I have faith in Governor Hayes. Since I saw you last Sunday I have a letter from Mr. Schurz in which he says Governor Hayes does not understand the magnitude of the opposition that he will encounter in his own party if elected.

In another:

I don't say that the President did wrong in sending troops into South Carolina on the call of the governor of the State, but I don't like the idea of bayonets in connection with elections. It is contrary to our system of government. The truth is, the

negroes are ignorant, many of them not more than half civilized, and even in those States where they outnumber the whites, they are no match for the whites. Mr. Lincoln was able to see that sooner or later the negroes in the South would be controlled by the whites unless the government intervened to prevent it, and he was opposed to such interference. I have always thought he was right. I think so still. I believe his policy would have divided the whites of the South. Our Southern system is wrong. The carpet-baggers have utterly bankrupted every Southern State. Rebels and others have alike been robbed of their substance. We know from history that the use of bayonets in elections is a dangerous thing. I am afraid of such precedents. How long will it be until the same thing is resorted to in the North! I still think it looks as if Tilden might be elected. If he is, I shall hope for the best and give him a fair trial.

With the election in doubt as the result of frauds and violence on both sides, Judge Gresham was opposed to "counting Mr. Hayes in" simply because the Republicans had the majority in the Senate and the army at General Grant's back with which to do it. This was the plan of the radical Senators led by Senator Morton. There were threats of war on both sides. Ultimately a conference committee proposed to create an Electoral Commission composed of five members of the House, five members of the Senate, and five justices of the Supreme Court to count the disputed electoral votes as a solution of controversy. It met with violent opposition from Senator Morton. In the midst of a debate in which Senator Morton was pressing Senator Edmunds hard, the latter discomfited Senator Morton by producing a telegram from Walter Q. Gresham and several others, stating that they, Republicans, favored the Edmunds plan. The bill was passed, and the Commission thus created carried the electoral vote for Hayes by a majority of eight to seven. "Partisan to the core" was the criticism made of that decision, and Judge Gresham felt that the criticism was just. The members taken from the Supreme Court were no less partisan than those from

the legislative branch of the government. The only criticism that was ever made of Walter Q. Gresham from a political standpoint was that he was not partisan enough.

Unquestionably there was ground subsequently to say that Walter Q. Gresham was not always in complete unison with the Republican party.

## CHAPTER XXIX

### REUNIONS OF ARMY OF THE TENNESSEE

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ORGANIZATION OF THE SOCIETY OF THE ARMY OF THE TENNESSEE—REUNIONS AT ST. PAUL, INDIANAPOLIS, AND CHICAGO—CIVIL AND MILITARY CELEBRITIES IN ATTENDANCE—GENERAL GRESHAM DELIVERS ANNUAL ADDRESS IN 1879—ENUNCIATES CONVICTIONS ON SOUTHERN POLITY.

SEPTEMBER 1, 1877, we started with a large party to St. Paul to attend the eleventh annual meeting of the Society of the Army of the Tennessee. This society had been organized in the Senate Chamber of the Capitol of North Carolina at Raleigh, April 14, 1865. Major-General F. P. Blair, Jr., was its chief promoter:

The object of the society shall be to keep alive and preserve that kindly and cordial feeling which has been one of the characteristics of this army during its career in the service, and which has given it such harmony in action, and contributed in no small degree to its glorious achievements in our country's cause.

Honoring these glorious achievements of our brothers-in-arms belonging to other armies whose services have contributed in equal degree to the re-establishment of our government, and desiring to draw closer to them in bonds of social feeling, the president or either of the vice-presidents of this society shall be authorized to invite the attendance of any officer of the United States Army at any of our annual meetings.

The Army of the Tennessee was the military unit with which, August 28, 1861, General Grant began his career. Excepting himself and General E. A. Paine, all his officers were volunteers without previous military experience. Accorded first place by the foreign military *attachés* out of all the organizations that "marched down the Avenue"



in the Grand Review, with the foreigners saying that the Eighth Missouri and the Eleventh Indiana, Lew Wallace's old regiment, were then the best on the globe, its members believed what General Grant wrote of them:

As an army it never sustained a single defeat during four years of war. No officer was ever assigned to the command of that army who had afterwards to be relieved from duty, or reduced to less command. Such a history is not by accident, nor wholly due to sagacity in the selection of commanders.

Brigadier-General John A. Rawlins, General Grant's chief of staff, at that Raleigh meeting was chosen president and continued as such until his death in 1869, while Secretary of War under President Grant. Only thirty-nine when he died, General Rawlins had been on General Grant's staff since that day in August, 1861, when the Army of the Tennessee was formed. Colonel L. M. Dayton of General Sherman's staff was elected secretary and held that office until his death in 1890. With Grant, Sherman, McPherson, Howard, and Logan, in turn the commanders of the Army of the Tennessee and four of them alive, Rawlins' selection at that time is significant of the esteem in which he was held by the men who best knew him. His biography will reveal him as one of the strongest characters of his time.

General Rawlins delivered the first annual address at the meeting held at Cincinnati, November 7, 1866. These annual addresses became the chief feature of the meetings of the society. In this address, or rather, oration, John A. Rawlins revealed what I have heard men of affairs say who were his clients before the war, that he was one of the best lawyers of his time. He had been a Douglas Democrat, a Douglas elector in 1860. He made a Union speech at Galena after Sumter was fired on, and then enlisted.

Standing for "an indestructible Union of indestructible States," breathing charity and forgiveness and confessing that race prejudice common at the beginning of the war (which Abraham Lincoln had admitted when pressed to

the wall in the Lincoln-Douglas debates in 1858, and the Southern leaders have so often quoted since the war), John A. Rawlins came up to what in 1866 he considered the logic of events.

You continued to fight on [after it became an Abolition war] until the enemy not only recognized the colored soldier when captured, as entitled to be treated as a prisoner of war, but until the rebel Congress, a Congress of slaveholders, notwithstanding the bitterness with which they had denounced the national government for the same act, passed a law authorizing the arming of negro slaves and putting them in the ranks side by side with the white soldiers of the Rebel army. Thus before the conflict ceased they stood elevated to the dignity of defenders of the flag they were under, whether national or rebel, representing freedom or slavery.

That which was the subject race under the law, was the equal of other races. Certainly "life, liberty and the pursuit of happiness" as Jefferson wrote it, should be the lot of the freedman, if not "greater privileges."<sup>1</sup>

The idol of the volunteers, more intimate with and possessing more influence over General Grant than any man with whom the latter ever came in contact, John A. Rawlins, by reason of his intellect and legal training, was the most powerful man in the Republic from 1865 to 1869. Always Rawlins' friend, Walter Q. Gresham was one of the first to divine the end to which Rawlins and General Grant were headed, namely, to universal suffrage for the freedman. Then it was that Frank P. Blair decamped.

General Sherman succeeded General Rawlins as president of the Society of the Army of the Tennessee, and held the office until his death. But for some reason, General Sherman did not attend the St. Paul meeting in 1877. It so happened that General Gresham was the senior vice-president present. He responded to the address of welcome at the State Fair and presided at the banquet which concluded the proceedings. At this banquet, very much to

<sup>1</sup> See page 460. It was Rawlins who pulled Grant away from Lincoln's position of limited suffrage for the freedman. See also page 316 *et seq.*

the great regret of the large majority of the members, some of the old-time bitterness cropped out. General Benjamin Spooner was assigned at the last minute to take the place of a man who had failed to attend, to respond to the toast, "Our Dead." In it General Spooner made an ugly but of its kind a most deft attack on the mayor of St. Paul, who was present as a guest of the society, because in his welcoming address the mayor had proposed the joint decoration of the Union and Confederate dead. "No man can go further than I in acknowledging the ability and valor of the Rebel soldier," said General Spooner, as he held up the left sleeve of his coat, minus his arm, "but until the living show a little more contrition, I am not yet ready to decorate their dead."

At St. Paul, Indianapolis was selected as the place for the next, the twelfth, annual meeting, and October 30 and 31, 1878, as the time. Meanwhile, General Sherman appointed a committee on arrangements, of which he named Walter Q. Gresham as chairman. Included in its membership was General Benjamin Spooner. At the first meeting, which was at a dinner at our house, my husband said, "We must get some new speakers for our banquet. We have all made speeches, some of us several times, and are talked out; we have right here in Indianapolis General Chapman of the Army of the Potomac and General Harrison of the Army of the Cumberland. Let us invite each to come and respond to a toast." This was agreed to. Up to that time, ex-Senator and ex-Governor Thomas A. Hendricks, late a candidate for Vice-President on the ticket of Tilden and Hendricks, had never attended a soldiers' gathering of any kind. My husband's suggestion that Mr. Hendricks be invited to come to the banquet and respond to one of the toasts, struck fire. All except the chairman were opposed to it. One man said, "I will never consent to invite a 'Copperhead' to one of our reunions." Another said, "It is against our Constitution." But General Sherman backed

up his chairman with a letter that was practically a command, and the invitation went and was accepted.<sup>1</sup>

The reunion began with the routine business meeting at the Park Theatre in the morning and a public meeting in the same place in the evening. General Sherman presided and Colonel W. F. Vilas of Wisconsin delivered the annual address. Invitations at my husband's instance had been extended to Governor Williams, Senator Joseph E. MacDonald, ex-Governor Thomas A. Hendricks, and a number of noncombatants, with General Benjamin Harrison at the head of the list of the soldier element who had served in other armies. They were all there. Colonel Vilas proved an orator worthy of that or any other occasion. Afterwards a member of President Cleveland's first cabinet and a member of the United States Senate, he but once came up to the standard he then set. This was a year later at the annual meeting of the Society of the Army of the Tennessee at Chicago. Democrat as he always was, Colonel Vilas did not believe Grant was whipped the first day at Shiloh.

Who that loved his fellowmen did not rejoice in the institutions of American liberty? Who that believed the great Creator comprehended all men in his benevolence, not the special few, did not pray for its perpetuity? Above all, how could an American fail to love his country? or dare attempt to destroy it? But it is written that sin shall be visited even upon the third and fourth generation. And there was sin in the land. Out of it grew sectional division and hatred between countrymen. . . . But *'First of all, soldiers of the Union were ready to clasp hands across the bloody chasm.'* Better than others, they knew the valor and the worth of our brethern of the South. And right ready have they ever been to rejoice in the restored brotherhood, and heartily they pray that if ever again this nation shall have need of war, shoulder to shoulder we shall oppose the common foe, and each for the other, fight its common cause.

At this Indianapolis meeting General Lew Wallace applied for membership. "Acknowledge your mistake at

<sup>1</sup> See page 469.

Shiloh and we will forgive you," said General Granville B. Dodge, "and welcome you to full fellowship." General Wallace refused to acknowledge any error on his part, and the incident was closed. Speaking of it afterwards, General Dodge said, "We would have gladly forgiven General Wallace, but exonerate him we could not without reflecting on General Grant, and that we could not honestly do."

Once within the circle, among the first to call on General Sherman, when the latter put up at the Bates House, was Thomas A. Hendricks. By his natural geniality and charm of manner he won many men who until then had looked on him only with aversion as an enemy to their country, while he in turn was captivated by their oratory, the warmth of greeting, and not least of all by "Sherman's Bummers." Writing of "Sherman's Bummers" and that Indianapolis meeting, George Harding, a newspaper man, said: "The *Herald* does not know much about war and armies but when it comes to drinking champagne we will put the Army of the Tennessee against the world." At the banquet General Sherman presided, and there never was a better presiding officer on such an occasion. Out of the eleven toasts, but three were responded to by men from the Army of the Tennessee. Generals Harrison and Chapman, as the special representatives of their respective armies, the Cumberland and the Potomac, spoke well. But the chief interest centered in Thomas A. Hendricks, who in response to the toast "Indiana" delivered in his best voice the best speech he ever made. Considering his opposition to the prosecution of the war, his votes as United States Senator against even submitting the Thirteenth and Fourteenth Amendments to the people for ratification, it deserves more than passing mention.

The Army of the Tennessee, in great battles and by many deeds of individual heroism, made an imperishable record. It was all to preserve our institutions, to maintain the integrity of the Union. By every consideration of material interests, as well

as by strong sentiments of patriotism, *the people of Indiana are held in powerful support of the legitimate results of the war.*

Perhaps I have already said too much in commendation of Indiana, but I must be allowed to claim for her still another merit. She has a breast big enough and warm enough to appreciate the heroic achievements of the Army of the Tennessee, and of those other co-operating armies that have preserved to us a nation.

Afterwards Governor Hendricks went to many of the annual reunions of the Army of the Tennessee, and he always had a warm welcome. He would come home and talk about "our boys and how they put down the Rebellion," until his partner, Oscar B. Hord, a native of Kentucky, a strong-headed man and a Secessionist, would, between indignation and raillery, say, "But, Governor, you did not use to talk about my native land that way."

Without any design, Chicago was selected as the place of meeting in 1879, and my husband as the orator. At noon, November 12, 1879, General Sherman adjourned the meeting and announced they would march to the depot to meet General Grant "on his return from his trip around the world." The annual address was delivered that evening at Haverly's Theater. The stage was crowded and the theater packed with distinguished men: Generals Grant, Sherman, Sheridan, Logan, Pope, Hurlbut, Schofield, Force, Hickenlooper, Auger, Oglesby, Harding, Macfeely, Bingham, Raum, Alfonso Taft, ex-Secretary of War, and men who had attained distinction in civil life, like Governor Beveridge and Governor Cullom. Newspaper men there were by the score, and among them Henry Watterson.

At the banquet on the following evening, Colonel William F. Vilas of Wisconsin, the orator of the year before, in responding to the toast, "Our First Commander, General U. S. Grant," gained a national reputation in an address that took only ten minutes to deliver, while Colonel R. G. Ingersoll, the great infidel, and one of our best friends, in

responding to the toast, "The Volunteer Soldier of the Union Army, whose valor and patriotism saved to the world a government of the people, by the people, and for the people," delivered an oration that will ever rank as an epic in literature. As one newspaper said, the Army of the Tennessee was composed of men who could talk, as well as fight. The year before, at Indianapolis, the ice had been broken.<sup>1</sup> S. L. Clemens (Mark Twain), an ex-Confederate, responded to the toast, "The Babies." "In that I was once a baby," Mark claimed he resembled General Grant.

Perhaps I have already quoted too much from the men of the Society of the Army of the Tennessee, but I must do so still further, for as one newspaper stated it, the position of Judge Gresham, with General Grant coming back as a candidate for President for the third time, was one of the most difficult and honorable ever filled by a citizen soldier. There was due tribute to Grant and Sherman as soldiers, with Grant first, as Sherman always wanted it. In the permanent records of the Society, Colonel L. M. Dayton, General Sherman's amanuensis, as he had been all through the war, made this entry: "The society has been heretofore exceedingly fortunate in the selection of orators, and General Gresham fully maintains the record, ranking with the ablest and the best."

And what is not of record, the orator got back the confidence of the old commander. In private, General Grant disclosed his regret at some of the things that had happened in his second administration which the orator deprecated. The General was also frank in his avowal that he would never be misled again. Convinced as he always was of General Grant's sincerity, Walter Q. Gresham became one of his supporters for the third term in 1880.

The opening sentiment—that the supremacy of the States, which the South asserted and we denied, were surrendered at Appomattox—Henry Watterson criticized as partisan, but fifteen years later it found indorsement in

<sup>1</sup> See page 466.

the address of Senator John W. Daniels of Virginia, an ex-Confederate, at the dedication of a monument to General Lee.

A few lines will show Judge Gresham's consideration for the Southern brother.

It is true that the Constitution was the result of mutual concession, that it did not fully express the views of either party or any one person.

There is this much incongruity in those two theories of the Constitution, which, taken together, make us at the same time a nation and a confederacy of nations, one sovereignty and thirty-eight sovereignties. Both of them cannot be true; there is an irreconcilable antagonism between them; one excludes the other. Sovereignty is supremacy, and in this sense it is one and indivisible; it is in the nation or it is in the State; it cannot be in both.

Slavery was imbedded in the Constitution before any of those who participated in the Rebellion were born, and it is to the credit of the enlightened and patriotic statesmen who framed that instrument, that they acted on the confident belief that slavery would soon cease to exist. It is the part of statesmanship to accept the highest attainable good; and if the majority of its framers, who certainly were sincere friends of popular liberty, had obstinately refused to make any concessions to the slave interest, the effort to form a more perfect union might have proved futile and even disastrous. But, as it was, the Southern people were supported and confirmed in their opinion of slavery; they were also swayed by inherited ideas and prejudices which were derived from a remote past, and are always potent in their influence. Their interests appeared to be in conflict with their duty to the national government; and, under all these circumstances, it would be ungenerous to assert that the war was wholly the act of conscious and deliberate wrongdoers. It is, moreover, undeniable that they displayed soldierly qualities of the highest order, and that, although mistaken and misguided in their purposes, they fought, as they believed, for a righteous cause, and in a war that was inevitable.

But it was with the future rather than with the past that Walter Q. Gresham was concerned.



Having conquered the Rebellion, we must now be satisfied with the peaceful sway of the laws. Military government in time of peace is contrary to the spirit of our institutions.

We must stand by the purpose for which we fought, and that was the maintenance of the government of our fathers. Citizens of the North and South sustain precisely the same relation to that government, and it cannot lawfully do in one State what it has not an equal right to do in all the States. The war legislated; it established the supremacy of the nation in every power conferred on it by the Constitution, *but it did not destroy the States, nor the right of local self-government.*

That the war did not destroy the States nor the right of local self-government, Walter Q. Gresham as a Federal judge ever maintained.

## CHAPTER XXX

### ELECTION FRAUD CASES

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THE ENFORCEMENT ACTS — POLITICS IN THE JURY BOX  
— STATE ELECTION CONSPIRACIES — CRIMES AGAINST POP-  
ULAR GOVERNMENT — THE CONSTITUTIONALITY OF ENFORCE-  
MENT ACTS UPHELD — WAR LEGISLATION DID NOT DESTROY  
THE STATES OR LOCAL SELF-GOVERNMENT — THE COY AND  
MACKIN CASES.

AFTER the war and the passing of the Thirteenth, Fourteenth, and Fifteenth Amendments—the Fifteenth Amendment going into effect March 30, 1870,—Congress, on May 31, 1870, by what is called the “Enforcement Acts,” imposed the same duties on State election officers at elections at which Representatives in Congress were voted for, in so far as these elections concerned members of Congress, that the State statutes imposed on the State election officers as to the election of State officers. This legislation also provided that the Federal judges might appoint United States marshals and inspectors to be at the polls and see that the State officers did their duty as far as the election of Congressmen was concerned. These acts were designedly passed to secure the ballot to the freedmen in the Southern States. In the Kentucky election in 1878 Blanton Duncan, an ex-Confederate, wanted to go to Congress as an Independent Democrat from the Louisville District. To scare off the regular Democrats and the Democratic organization, Mr. Duncan threatened all, especially the Kentucky State officers, in the event of the ballot boxes being stuffed against him or of his being counted out, with the pains and penalties of the Enforcement Acts. The election developed that Mr. Duncan had no cause to complain of the Kentucky

election officers, but his exposition of the law was so clear that after the elections in October and November of that year, the National government began the prosecution of a large number of State election officers in Cincinnati and Baltimore and a number of the citizens of Jennings and Jackson counties, Indiana, the latter before Judge Gresham.

The indictment in the Jennings County cases in three counts was drawn under the general conspiracy statute of the United States, Section 5440,<sup>1</sup> which made it a felony for two or more persons to conspire to commit an offense against the United States. The section of the statute that it was charged it was intended to violate was Section 5511<sup>2</sup> of the Enforcement Act, which made it a felony to vote at a place at which one was not lawfully entitled to vote, or to aid, counsel, or advise any such votes, or person or officer to do any act thereby made a crime. It was also made an offense against the United States for a State election officer to violate any State statute in so far as it might affect the election of a member of Congress.

The government was represented by Colonel Nelson Trussler, his assistant, Major C. L. Holstein, and by General Benjamin Harrison and his partner, William H. H. Miller, as special counsel. The defendants were represented by ex-Governor Thomas A. Hendricks, David Turpie, A. W. Hendricks, and Jason Brown.

Elaborate arguments for two days were made on the motion to quash the indictments, but all three counts were finally sustained.

When, on May 8, 1879, the jury was called to the box, it consisted of seven Republicans, four Democrats, and one Independent. General W. W. Dudley, the United States marshal, afterwards famous as the author of the "Blocks of Five" letters, had summoned the jury. General Harrison was then the chief leader in the Indiana Republican organization. General Dudley was also prominent as a manager of the affairs of the party, and in his political

<sup>1</sup> Now Section 37 of Criminal Code.

<sup>2</sup> Repealed.

capacity had caused a large number of the practical workers of the Republican organization of Indianapolis to assemble in the courtroom. Two of the Democrats were challenged by General Harrison, and their places were filled by Republicans called by General Dudley from the bystanders. The defense then challenged three Republicans, and in their places General Dudley called three other Republicans,—more partisan, the defense claimed, than those displaced. Colonel A. W. Hendricks said, "It is evidently the purpose of the government, should the regular panel be exhausted, for Colonel Dudley to make up the jury from partisan Republican bystanders in the courtroom." At the adjournment for the day, the jury stood nine Republicans, two Democrats, and one Independent.

The next morning, at the opening of court, Governor Hendricks, after reverting to the political complexion of the jury and the political character of the case, said:

After consultation with the gentlemen associated with me in the defense of this case, I say to the court, considering the case as it is and the political relations of the defendants, that I do not think we ought to be compelled to try this case before this jury, and I ask Your Honor to order a new jury to be called which shall be more evenly divided.

General Harrison replied:

If Your Honor please, I think I never before heard in any court a request of the kind just made by Governor Hendricks, viz., challenging the competency of a juror because he belongs to one or the other of the political parties. In some of Governor Hendricks' interrogatories to the jury he seemed to assume that this question involved political feeling and was an issue between the parties. In answer to that and in answer to what he has just said here, which is substantially a challenge to the array of jurors because more than half of them are Republicans, I wish to say that this is an extraordinary and unusual challenge, not supported by any law found in the books or in the practice of any court, so far as I know.

After further argument, the court said:

Of course the presumption of the law is that no man goes into a jury box remembering his politics, and yet sometimes they do; and it is of the utmost importance in a trial of this kind that the defendants should feel that they have an impartial trial. Before taking the step which I have concluded to take, I think it due to the jury to say that the court has no reason to believe that any jurymen here has any desire to do anything other than his duty as a jurymen. But it is of the utmost importance in a trial of this character that there should be no ground of complaint whichever way the trial may result, and I will order a special venire sent out, returnable tomorrow morning. I know it is a very unusual thing to do, but I think at common law the court may do it when it is satisfied the interests of justice require it. I think a judge should not hesitate to exercise any authority belonging to his office in the interests of justice. This is a case likely to excite prejudice. I do not say it would have that effect with this jury, but the defendants are arraigned here under a grave charge, and men, under such circumstances, are naturally apprehensive. I think this question is in the discretion of the court, but should be exercised only in extraordinary cases. I do not want any one to have ground for feeling that there is cause for complaint when this trial is over. And as I think that the defendants might naturally feel as they do, I will order a venire of twenty-two men, whose names will be given in the venire to appear here to-morrow morning.

In its report of the day's proceedings the Indianapolis *Sentinel*, the Democratic organ said:

General Harrison, his partner, Mr. Miller, the assistant district attorney, Major Holstein, and Judge Martindale, the proprietor of the Indianapolis *Journal*, the Republican organ, privately vented their indignation at the action of the court, which, the *Sentinel* said, was that of a fearless judge.

Mr. W. H. H. Miller, General Harrison's partner and associate in this prosecution, said then and afterwards in the Coy case, which will be duly elaborated for it is part of our judicial history, that "it is impossible to convict

a Democrat in Judge Gresham's court." But William H. Miller, as Attorney-General of the United States in President Harrison's cabinet, lost his zeal when it came to prosecuting Republicans for violating the election laws.

From the twenty-two men, among the best known citizens of Indianapolis, summoned by the special venire, twelve, six Republicans and six Democrats, were sworn to try the cases. They were A. Abromet, L. S. Ayres, Samuel Beck, S. T. Bowen, W. T. Christian, Marius Eddy, C. A. Ferguson, Phillip Gapen, W. J. Holliday, A. G. Pettibone, Joseph Stout, and James C. Yohn.

The charge of the government as set forth in the opening statement of General Harrison to the jury was that James Wilkinson, the Democratic candidate for treasurer in Jennings County; William Brashier, a citizen of that county; and twelve other citizens of Jennings and Jackson counties, including Samuel Johnson, the mayor of Seymour, all Democrats, conspired—contrary to the statutes of the United States and the State of Indiana—to import into the Fourth Congressional District of Indiana 125 men not residents of that congressional district, for the purpose of voting in Jennings County, a part of the Fourth Congressional district, for the Congressman to be elected on the 8th day of October, 1878, at which Leonidas Sexton was the Republican candidate and Jephtha D. New was the Democratic candidate; that Thomas McGovern, a private detective living in Seymour, discovered the conspiracy as stated on the 8th day of September, and reported its existence to one Peter Platter and other Republican leaders, who in turn advised McGovern to join the conspirators or defendants, get their confidence, and expose their illegal acts. For his services McGovern was to be, and was, paid the sum of \$400.

Governor Hendricks made the opening statement for the defense. James Wilkinson, he said, was a clean, active young man who was making great inroads on the Republican

majority of 400 in Jennings County; that the 125 men whose right to vote in Jennings County the government questioned, had gone there to work and for permanent residence; that Peter Platter and David Overmeyer, the brother of John Overmeyer, the chairman of the Republican State Central Committee and the Republican candidate for representative to the legislature from Jennings County, political adversaries of the defendants, conspired with McGovern to involve the defendants in the appearance of being engaged in the fraudulent importation of voters into Jennings County. That in pursuance of this conspiracy and for the money paid and to be paid by Platter, Overmeyer, the chairman of the Republican State Central Committee, and the chairmen of the Jennings and Jackson County Committees, McGovern made the proposition to the defendants to import the voters, which they declined. Then the defendants said that McGovern went ahead and imported a number of men from Jackson County to vote in Jennings County, and on the eve of the election made an affidavit which was printed in a handbill and sent broadcast throughout Jennings County, that James Wilkinson and others were importing voters into the Fourth Congressional District. It was charged then and admitted later in the trial that the \$400 which was to be paid and was paid by the political committees to McGovern, was agreed to be paid at a meeting which General Harrison and State Chairman Overmeyer attended at North Vernon, the county seat of Jennings County, while on a campaign tour in September, 1878.

With one hundred witnesses on a side and thirty in rebuttal, the evidence was not closed until May 30. In pressing the defense, the defendants' counsel were aggressive and merciless. They established the fact that McGovern was a man without character and unworthy of belief. For several days General Harrison was absent from the trial by reason of sickness. Colonel A. W. Hendricks was the architect or the lawyer of the defense. His plan

was, having broken down the case of the government and discredited everybody connected with the prosecution, not to put a single defendant on the witness stand. "Besides," said the colonel, "an administration whose title rests in fraud [referring to the Hayes-Tilden contest] is not in a position to ask the conviction of men who stand innocent before the law." But Governor Hendricks' zeal, enthusiasm, and confidence overruled his associate, and James Wilkinson was put on the witness stand in his own behalf. He speedily went to pieces under General Harrison's cross-examination. He was the only man who went on the witness stand, and he alone was convicted. "Had Wilkinson kept off the witness stand," said A. G. Pettibone, one of the Republican members of the jury, years afterward to me in Chicago, "he would have escaped conviction."

General Dudley up to this time had been a frequent visitor at our home. He had a fine record as a soldier and had lost a leg at Gettysburg. A handsome man, a thorough gentleman, upright in all his business and professional relations, in politics he believed the end justified the means. Never eminent in his profession, he saw in that Jennings County trial the force of Colonel A. W. Hendricks' defense, and he later applied it to the prosecution that was instituted against him in 1888 because of his famous, or infamous, "Blocks of Five" letters.

District Attorney Trussler opened the Jennings County case to the jury. David Turpie and Governor Hendricks followed for the defense, and General Harrison closed the case for the government. Governor Hendricks spoke a day and a half and General Harrison two days.

There was no registration law in Indiana at that time, and the only qualification for a voter was that he be twenty-one years of age, a resident of the State six months preceding the day of the election, and no limitation as to the time within which he might change his residence from one precinct to another. All the law required was that there



be a bona fide change of residence, if only on the day before the election. David Turpie was able to argue that he might lawfully vote at any one of the three precincts in Indianapolis, so indefinite was the law. General Harrison was pressed hard for acting in such a case at the behest of a political party. And so fierce was the denunciation of McGovern, the detective, that General Harrison wisely disclaimed him, asked the jury entirely to disregard his testimony, and was able, with the aid of the court, to make out his case from the testimony of other witnesses and the one defendant, James Wilkinson, who went on the stand in his own behalf.

In opening his argument, General Harrison emphasized the fact that he was a sworn officer of the government, and that he was not a partisan. He said:

I should despise with unutterable loathing that political sympathizer who should give one whit more attention to what I say, or any greater weight to my argument, because we are of the same political party; and I should despise myself if I thought that I brought to the trial of this case a single taint or impulse from the field of politics. And equally, Gentlemen of the Jury, should I despise with unutterable loathing that political opponent who should put an additional barrier in the way of the approach of my argument to his conscience and intellect because he was my political opponent. Politics must not enter here. They may be low or high. The distinguished gentleman who first addressed you for the defense repudiated the idea that politics were low.

*It will indeed be a sad day for our country when so much as a spray from those waves of politics which roll so tumultuously over the land, can be felt in the face of a jury or judge.*

In reply to Governor Hendricks, he said:

It is not necessary that there be a meeting of the conspirators at all. Men have been convicted of a conspiracy who have never looked each other in the face, who have never spoken or written one word to each other. The question is this: Have they by word or act made themselves parties to the common design? If they

have, then they are co-conspirators for the accomplishment of it. There need not be a word or a wink, but only that they act together to accomplish the unlawful purpose. This *partnership* in crime is curious in its character. If a new partner comes in just when the crime is being consummated, at the climax of the enterprise, he becomes a partner from the beginning, and is entitled to share in all the odium and punishment that belonged to the originator of the enterprise.

I say again, and I ask His Honor to charge you, that it is not necessary to the crime of conspiracy that a single illegal vote should have been cast.

The court so instructed.

The crime here charged is an exceedingly grave one,—graver, it seems to me, than an offense against life or property; more unsettling of all human rights, more disturbing to the peace of society, than any crime that can be committed. I know many men are more shocked when some crime against the person or against property is committed, but, gentlemen, the security of our persons and our property is in the law and in the administration of it by the courts. So that any combination or conspiracy that tends to corrupt the ballot box and return by fraud and artifice men to the legislature who are not properly elected, or to the bench to discharge judicial functions, men who are not the choice of the majority of the people, strikes at the very foundations of our government and the peace of society. Is that class of crime a political crime? Is it possible that such a case as this is a political case?

The General then quoted Governor Hendricks to the Indiana legislature:

Our present election laws are not very efficient to prevent fraud. But if they are inefficient, if they give facilities to fraud when construed as courts have construed them, the construction which has here been given to them by the counsel for the defense scandalizes even these loose election laws we have in Indiana.

Then he discussed the evidence, concluding:

Now, Gentlemen, the only other question is, and I recur a little to what I said in the opening, do you believe these men that

were brought into Jennings County were to stay there and make their permanent residence in that county? [Messrs. Turpie and Hendricks had argued the changes of residence from Jackson to Jennings County were in good faith.] You have heard what Johnson, Holmes, and their Democratic and personal friends have said these men did. Can you justify it? If it be said a jury of twelve men chosen for their intelligence and high character in the city of Indianapolis, justify such conduct in politics, then I say, repeal every criminal law on the subject of elections; proclaim it to the world that all our young men are loose young men; *let money with its corrupt influence be used*, and let them be herded from county to county whenever their votes may be needed to carry any particular election.

In conclusion, allow me to speak to some of you again in regard to the high plane of duty to which your oath calls you. I do not wish you to feel I doubt you, that I doubt your disposition and willingness to come up to the full summit of your duty. Let each one turn his eyes inward. Let him search his heart as with a lighted candle, and see if there be any loathsome prejudice or bias hidden in its darkest recesses for or against the defendants. As the Saviour of man when He came to the earth and found that temple on which it had been written, "It shall be called by all nations the home of prayer," had become a den of thieves, and as He came into the temple and made a whip of cords and drove the money-changers and them that sold oxen and doves out of the holy place of prayer, saying to them with withering scorn, "Take these things hence," so let every juror I speak to, drive out every unholy bias or prejudice that might creep into the pure sanctuary of his heart.

After advertg to the indefiniteness of the Indiana statutes on the question of residence, which was favorable to the defense, the court's instructions concluded:

This is not a political trial. The defendants are charged with the commission of a crime; although it is claimed that the offense was committed in the interests of a certain political organization, yet they are to be tried just as if indicted for any other offense.

Whatever feeling or prejudice may have been exhibited by

others during the progress of the trial, the jury, in the discharge of their solemn duty, should allow no political nor other improper considerations to influence them.

If the defendants are not guilty on the evidence, party prejudice should not prevent the prompt return of a verdict in their favor; and if, on the other hand, the evidence clearly shows them guilty, such prejudice should not delay a verdict against them.

He who deliberately plans a fraud to defeat a fair and honest expression of the popular will through the ballot box, and actually enters upon its execution, commits a grave crime against popular government, and good men of all parties will condemn his conduct and rejoice in his punishment when his guilt has been satisfactorily established. You will carefully examine the evidence with reference to each of the defendants, and convict or acquit each as the proofs may require. Your verdict may, therefore, be a conviction of all, an acquittal of all, a conviction of two or more of those on trial, and an acquittal of the balance, or a conviction of any one on trial, if he is found to be guilty with any defendant not on trial, and an acquittal of the balance. Should you find any or all of the defendants guilty, it will be the duty of the court to fix the punishment. With this you have nothing to do.

Having thus sustained the General when hard pressed, Judge Gresham thought that Harrison should ever afterwards live up to the high standard of political morality they then agreed to.

But one man was found guilty, James Wilkinson, of conspiring with William Brashier, who, although indicted, was not on trial. He had absconded. Twelve were acquitted. But as to Henry Warpe and Calvin Wilder, the jury failed to agree and they continued at liberty under the bonds they had previously given. The Democratic leaders in Jennings and Jackson counties then indicted McGovern and a number of government witnesses for perjury. One was convicted in Jennings County and sent to prison. Then there was a compromise and the indictments in both State and Federal courts were nolle.

Wilkinson was sentenced to twelve months in the State Prison at Jeffersonville, Indiana, at hard labor. The judge said in passing sentence:

The trial was protracted and fair, and the court is now called on to pass sentence. If the principle of governing by majority, under proper limitations, is to be maintained, the elective franchise must be sacredly guarded; unscrupulous tricksters who conspire to prevent a fair and honest expression of the popular will through the ballot box should be punished with a severity that will deter others from committing similar offenses.

The *Sentinel*, the Democratic State organ, said: "The principles Judge Gresham announced would send thousands of Republicans to the penitentiary." Mild criticism for the partisanship of that day! But the trial had not been conducted so that there was "*no ground for complaint*," and there was none. No attempt was made to take Wilkinson's case to the Supreme Court. Governor Hendricks acquiesced with his partners in the constitutionality of the Enforcement Acts.

But the prosecutions begun at the same time in Baltimore and Cincinnati, which resulted in convictions, were taken to the Supreme Court, where the Enforcement Acts and the power of Congress to impose duties on State election officers, in so far as their duties related to the election of a member of Congress, were sustained.<sup>1</sup> Justice Field and Justice Clifford, the Democratic members of the court, dissented, following the Prigg case in holding that all Federal powers must be exercised by officers of the Federal government. As the mouthpiece of the court, Justice Bradley in the Clark case used this language:

In what we have said it must be remembered that we are dealing only with the subject of elections of Representatives to Congress. We do not mean to say, however, that for any acts of the officers of the election, having exclusive reference to the election of State or county officers, they will be amenable to

<sup>1</sup> Ex-parte Siebold 100 U. S. 371 and ex-parte Clark 100 U. S. 399.

Federal jurisdiction. Nor do we understand that the enactments of Congress now under consideration have any application to such acts.

In other words, as the soldier-judge and orator had put it, "*while the war legislated,*" *it did not destroy the States, or the right of local self-government.* But in maintaining these propositions, or the explicit language of Justice Bradley, Judge Gresham, as United States Circuit Judge for the Seventh Circuit in 1884, in the Mackin case, brought on himself much criticism, and in 1887, in the Coy case, he differed with General Benjamin Harrison and his law partner, William H. H. Miller, with William A. Woods, the district judge at Indianapolis, with Justice John M. Harlan, and with the Supreme Court of the United States.

"It is not common sense," said Justice Miller, speaking for the Supreme Court of the United States in the Coy case, with Justice Field dissenting because the court was going beyond the Cincinnati and Baltimore cases or the Siebold and Clark cases, "for the States to punish offenses which relate solely to the State officers and for the government of the United States to punish offenses which relate solely to the election of members of Congress."

Then Justice Miller broadened the scope of Federal jurisdiction. Any violation of any provision of a State statute expressed or implied, although related exclusively to the election of a State officer at which a member of Congress was voted for, was a crime punishable in the Federal courts.

Coy's crime consisted in forging the election returns relating to the election of a criminal judge in Marion County, Indiana, on the 2d day of November, 1886. He had no purpose, intent, or desire to effect the election of the Congressman. He was the chairman of the Marion County Democratic Committee that year.

Born in Greensburgh, Indiana, in 1851, Simeon Coy had had but little education. In 1863 he went to Indianapolis. In 1872 he was elected a member of the Marion

County Democratic Committee, and in 1881 a member of the City Council, where, it was said, he was always on the side of the gas and transportation companies. In 1884 he was elected chairman of the Democratic County Committee over the protest of the better element of the party. A pleasant, affable man, with much shrewdness, the election returns demonstrated his remarkable genius for organization. He dominated conventions and nominated candidates. Meanwhile he ran a saloon and was compliant in becoming bondsman for men accused of crime. Six months before the 1886 election, Coy became one of the bondsmen in the penalty of \$4,000 for two notorious crooks who were arrested and indicted for "bunko steering." They failed to appear for trial and there was a judgment of forfeiture. Coy's purpose, among others, was to have the indictment held insufficient on the motion in arrest and thus relieve him from paying the \$4,000. His co-surety was insolvent.

In a *habeas corpus* proceeding, Judge Gresham, in the face of much pressure and subsequent criticism, held Coy and his associates could not be prosecuted in the Federal court for forging the election returns so as to defeat the Republican and elect the Democratic candidate for criminal judge.

Then, under an indictment drawn by Judge Woods himself and sustained by Justice Harlan and the Supreme Court, Coy was convicted and sentenced to the penitentiary. The gist of the charge against Coy and his associates was that they had conspired to induce certain election inspectors and custodians of the election returns to part for a short time with the physical possession of the certificates and tally sheets, while the law, the Indiana statute, did not require, command, or even suggest that the inspector keep these documents in his actual physical possession from the time he received them from the Election Board until he delivered them to the Canvassing Board. The implication, Judge Woods and Justice Harlan argued in their opinions, was

that the legislature meant that the inspector should keep the unsealed certificate or tally sheet in his actual physical possession until he delivered it to the county clerk. This was too much of a refinement for even the Supreme Court of the United States, so it broadened the Federal jurisdiction as we have heretofore stated.

When it came to prosecuting Republicans in the "Blocks of Five" cases in 1889, President Harrison, Attorney-General Miller, Judge Woods, and Justice Harlan turned back on what they had established as the law in the Coy case. Senator Quay of Pennsylvania, a possible defendant in the "Blocks of Five" cases, who used his official and political power to arrest their prosecution, said Gresham's theory of the law was correct. Aside from the fact that the purpose or interest was different in the "Blocks of Five" cases,—that is, to affect a National and not a State election—one thing Judge Gresham did not do which some of his critics claimed he ought to have done—he did not lend a hand in getting these cases out of court.

Another thing Judge Gresham did not do, for which General Dudley, at least, was very grateful,—he did not use the principles established by the Supreme Court in the Coy case as a means, as he might have done, to push the prosecutions against Dudley or even General Harrison himself, because the facts were conclusive that General Harrison was cognizant of everything that was done by Dudley and his co-conspirators in carrying the election of 1888.

This will more fully appear when we come to the Dudley "Blocks of Five" letters and again in 1893 when the Democrats repealed practically all of the Enforcement Acts.

Joseph C. Mackin—"Chesterfield," as he was called—and Thomas Gallagher induced the county clerk of Cook County, Illinois, to permit them to have access to the election returns for the election held November 4, 1884, before



these returns had been canvassed by the Canvassing Board. Mackin and Gallagher then changed the certificate in a certain precinct, showing that Henry W. Leman had 220 votes instead of 420 votes, and that Rudolph Brand had 470 instead of 270 votes for the office of State senator. They also substituted, in place of the ballots actually voted, ballots which they had had printed and the same as the ballots actually voted, except the changes as to State senator. The ballots as printed and substituted for those voted gave Brand 470 and Leman 220, and thus conformed with the forged certificate. Leman was a Republican and Brand a Democrat. Brand's election would make the Illinois legislature Democratic on joint ballot, would insure the defeat of Senator Logan's reelection and the election of a Democratic senator, and would make the United States Senate Democratic. The discovery of the forgery saved Leman his seat and assured Senator Logan's reelection to the Senate.

A citizens' committee was organized and employed counsel to aid in the prosecution of Mackin and Gallagher and their co-conspirators. Instead of being indicted, they were proceeded against "by information," a mere affirmation under the oath of the district attorney that the defendants had conspired to commit offenses as described in violation of certain sections of the statutes of the United States already referred to as the Enforcement Acts. They were tried before Judge Blodgett and a jury, convicted and sentenced to two years in the penitentiary at Joliet, and to pay a fine of \$5,000 each. On a petition for a writ of *habeas corpus* and stay of sentence, Judge Gresham issued the writ and stayed the sentence until he and Judge Harlan could hear the case together. They certified it to the Supreme Court.

The Supreme Court did not pass on the question as to whether the Federal courts had jurisdiction, where it affirmatively appeared that the offense was designed only to affect the election of a State officer and not a member of

Congress. But it decided that Mackin and Gallagher could only be proceeded against, if at all, in a Federal court, by way of indictment by a grand jury; that the initial proceeding by way of "information" was void because in conflict with the amendment to the Constitution of the United States. So the question was settled for all time in the Federal courts that before a defendant can be put to trial for a felony he must be indicted by a grand jury.

Before the case was heard before Judge Gresham and Judge Harlan, Judge Gresham was subjected to much criticism as a judge who was imposing technicalities in behalf of men who had committed crimes against the elective franchise. Many threatening letters were received. One letter, however, came from Judge Davis, saying: "I told the lawyers I talked to that if I had been on the bench I would have decided the same way you did in the Mackin case."

Pending the appeal to the Supreme Court of the United States, Mackin was indicted for forgery in the Criminal Court of Cook County, Illinois, was subsequently tried and convicted, and served his term in the penitentiary.

At the 1880 election Judge Gresham divided the special United States marshals and supervisors between the Democrats and Republicans, although the latter made the application for their appointment, and up to that time the Federal judges had appointed only Republicans to these positions.

Judge Gresham declined to become the Republican candidate for Governor of Indiana that year. He contemplated becoming candidate for United States Senator, but reconsidered the question and declined.

## CHAPTER XXXI

### IN PRESIDENT ARTHUR'S CABINET

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GRESHAM APPOINTED POSTMASTER-GENERAL — AGREEABLE NEIGHBORS IN WASHINGTON — EXCLUDES LOUISIANA LOTTERY FROM UNITED STATES MAILS — SUIT FOR DAMAGES — ADVISES CONGRESS TO AMEND ITS LAWS — LOTTERY SUPPRESSED — BLAINE AND ARTHUR RIVALS — OFFER OF BLAINE TO GRESHAM DECLINED — BLAINE NOMINATED BY REPUBLICANS — GRESHAM MADE SECRETARY OF TREASURY — CUSTOMS DUTIES — WAR TARIFF.

THE repeal of the Bankruptcy Act of 1867 took effect in 1879 and an immense amount of labor devolved on the district judge because there were throngs who wanted to clean up and begin anew. With the bankruptcy dockets cleared and ahead of the chancery and law calendars, Walter Q. Gresham had arranged, in 1882, to retire from the bench and go into partnership with Joseph E. MacDonald. While he was holding his last term of court at Evansville, President Arthur, without any solicitation on his part and even without his knowing that he was being considered, offered him a place in the cabinet as Postmaster-General.

The public and the press received the appointment with great cordiality. It was said that a number of gentlemen were responsible for the President's having made the appointment, but it proved so popular that Mr. Arthur finally announced that he was himself the father of the idea.

It so happened that just at that time Colonel John W. Foster, who was then living and practicing law in Washington, was appointed minister to Spain. It was arranged to the satisfaction of all that we should take the Foster house at 1405 I Street.

Congress was not in session and the season was over, but Washington is charming out of season, especially in April and May. General Sherman's house was just around the corner on Fifteenth Street, and he was as neighborly as a village friend. The wife of his next-door neighbor, General Henry W. Slocum, a member of Congress from New York, was to become one of my best friends, also Mrs. John G. Carlisle of Kentucky. Both were women of ability who had then seen much of affairs, and continued to do so. Another agreeable woman living on I Street was Mrs. White, the daughter of Senator Philetus Sawyer of Wisconsin. Senator John Sherman lived a short distance away on H Street. I saw much of Mr. and Mrs. Sherman. Secretary of the Navy W. E. Chandler lived in the same block. He almost lived with us that spring and summer, as Mrs. Chandler was away. Chief Justice Waite was our next-door neighbor. Justice and Mrs. Samuel Blatchford also lived in the same block on the corner of H and 15th streets. Former Secretary of the Treasury Hugh McCulloch, whose retirement of the greenbacks my husband had believed in, lived close by on McPherson Square, and was a frequent visitor. He talked finance and seemed to have the fiscal affairs of the government at his tongue's end.

Among the men who took a fancy to my husband was Justin S. Morrill, author of the Morrill tariff and then a senator from Vermont. The Morrills lived but two blocks away on Vermont Avenue. Senator Morrill's sister, Miss Swan, the finest type of the New England woman, who greatly admired my husband's character, manifested an interest and friendship that still puts a glow to my heart. General Schenck, the man who taught the Englishman the great American game, was then living in Washington. At his home, at the White House—where President Arthur from the start took up with and was on good terms with the Southern men—at "Chamberlain's" and at "Welker's," the soldier element of the sections sat over the green cloth

sometimes until very late hours—later than Miss Swan approved. "Chamberlain's" was less than a block from our house. There Henry Watterson, or "Marse Henry," put up when he came to town.

The one-legged Confederate, M. B. Butler, Senator from South Carolina, was in that inner circle; also Senators Vest and Pettit and the ex-Confederate Senator Mahone, who had organized a party of his own in Virginia. When Matthew Stanley Quay came to town as United States Senator it was "Marse Henry" who said: "Mat, here's your chair!" From the House there was "Private John" M. Allen of Tupelo, the one-legged "Dave" Henderson, General Henderson of Iowa, and "Tom" Reed, each afterwards Speaker. In everything but preserving the outward semblance of party divisions, there was a friendship that obliterated party lines.

Our old pastor, Rev. William A. Bartlett, of the Second Presbyterian Church of Indianapolis, was in Washington as the pastor of the New York Avenue Church. My daughter and I attended that church. Justice Harlan was a member there, and it at once seemed to become the custom for him to stop in at our house Sunday mornings on the way home from church. Judge Harlan was a good story-teller, with a strong, resonant voice. He was much interested in my husband's efforts to exclude the Louisiana lottery from the mails.

The Congress of 1872 had passed acts against the use of the mails in furtherance of schemes to defraud, and to suppress lotteries. Section 4041 of the Revised Statutes authorized the Postmaster-General, upon any evidence satisfactory to him, to forbid the payment of any money order in favor of, or drawn to the order of, any firm conducting a lottery, and Section 3929 authorized its return to the sender with the word "fraudulent" stamped on it. The payment of money orders was stopped, but the lottery company then wrote its patrons to remit by express. Section 3894<sup>1</sup> follows:

<sup>1</sup> Since amended and now 213 of Criminal Code.

No letter or circular concerning illegal lotteries, so-called gift concerns, or other similar enterprises, offering prizes, or concerning schemes devised and intended to deceive and defraud the public for the purpose of obtaining money under false pretenses, shall be carried in the mail. Anybody who shall knowingly deposit or send anything to be conveyed by mail in violation of this section shall be punishable by a fine of not more than \$500 nor less than \$10 with costs of prosecution.

Justice Harlan agreed with my husband that this section was sufficient authority to warrant the Postmaster-General in excluding the lottery company's letters from the mail. Accordingly, the Postmaster-General ordered the postmaster at New Orleans to refuse to deliver to the Louisiana Lottery Company, and to the First National Bank, the agent of the Lottery Company at New Orleans, any mail, and to refuse to accept mail when he knew it came from these parties.

Judge Billings promptly issued a mandatory injunction on the postmaster at New Orleans to deliver and receive the lottery mail. Then Mr. Gresham requested the Attorney-General to secure the dissolution of the injunction, but made no suggestion as to how the case should be managed. The motion to dissolve was heard on a Saturday and was refused. I remember that Justice Harlan on the following Sunday morning was more provoked than my husband at Judge Billings' action. Indeed, the Justice was so wrought up that morning that the discussion was still on when the people were returning from church. This gave the Postmaster-General occasion to remind the Justice that even on a Sunday, in helping to prosecute a lottery company, he should not forget infant damnation and that Calvinistic confession of faith. Justice Harlan said that William A. Morey, the associate attorney-general, had not managed the case right. Walter Q. Gresham said the idea of a court, in the face of a general statute, attempting to control the discretion of one of the departments of

the executive branch of the government, was preposterous. Not for a minute should a court of equity listen to such an application as the lottery people had made to Billings.

But with narrow and technical judges the only thing to do was to ask Congress for a more specific act. The power was there. Senator Sawyer was chairman of the Post-Office Committee of the Senate, and his committee listened to Judge Gresham on many occasions as to how the act should be amended. It was six years before the Postmaster-General's suggested amendments became law. Then the Lottery Company, after the State of Louisiana turned against it, moved to Honduras; and during the second Cleveland administration, Mr. Gresham helped William S. Bissell frame a statute that effectually suppressed it.

After the dissolution of the injunction by Judge Billings, the Lottery Company and the First National Bank of New Orleans brought suits for \$100,000 each against Walter Q. Gresham for exceeding his powers as Postmaster-General in denying them the use of the mails.

At that time Mr. Blaine was writing his "Twenty Years in Congress." Judge Gresham belonged to the branch of the Republican Party that was opposed to Mr. Blaine. An intimacy between the two was started by Dr. Bartlett, our minister, who came to the house one evening and said that he did not know Mr. Blaine personally but would like very much to meet him. My husband said, "We will go and call on him," and they did so that evening. Mr. Blaine returned the call the next day, and after that was a frequent visitor at our house. No man could be more agreeable or attractive than Mr. Blaine when he set about to make himself engaging.

Sometimes Mr. Blaine and Judge Harlan met on a Sunday morning. They talked about the war, the Amendments to the Constitution, the surplus, and the personnel of the different men on both sides who had participated in the Rebellion. Mr. Blaine discussed General Grant freely.

He called him the "Old Man," and said, "He liked popular applause more than any man I ever knew." From his manner it seemed to me that Mr. Blaine regretted he had not "served time" during the Rebellion. One subject never was discussed, and that was the Cincinnati Convention of 1876, when it was said the opposition (in which John M. Harlan was a leader) to Mr. Blaine, at a critical stage, to head off a stampede to Blaine, turned out the lights in the convention hall and thus secured an adjournment they could not otherwise have secured. Then it was the deal was made whereby Hayes was nominated and Harlan was to be put on the Supreme bench.

We were in Washington until late in the summer. I made up my mind to be prepared for New Year's and for the Cabinet and other dinners we would be required to give the coming winter. While there were no caterers in Washington in those days as there were when I was there the second time, and as there are now, there were a few fine old colored cooks who were engaged long in advance of the season. The most noted one of these was a Mrs. Brown. I sent for her and engaged her for the opening of the season, which is New Year's day, and then for the first Cabinet dinner. She was a wonderful cook. My New Year's reception came off all right. Mrs. Chandler, wife of the Secretary of the Navy, came in to see me one day just before the dinner, to know why I had taken Mrs. Brown away from her and how in the world I had found her out, saying that Mrs. Brown was the finest cook in Washington and she had always had her for New Year's.

With the assembling of Congress in December, John G. Carlisle was selected by the Democrats as Speaker of the House over Samuel Randall, the Protectionist Democrat from Pennsylvania. The cabinet receptions then began. It was all new to me, and as my husband was then looked on as the man to whom Mr. Arthur might turn in the event that Mr. Arthur became convinced he could not secure the



nomination, we had great crowds at our receptions. As a foil, Mr. Blaine was saying General Sherman should be nominated. Senator Sherman was not then a candidate, while General Sherman was as warm and cordial as he was the first time I met him at Memphis during the war. He said he was for Gresham. He came to my first afternoon reception. Somehow it was learned that he was a frequent visitor and this brought a great many people who wanted a chance to talk with him. More people, I thought, came to see General Sherman than came to see me. One evening when General Sherman came in, as he did quite often, he said, "I like to come to your receptions; it is like going to a Sunday school convention." He meant, there were so many people there.

General Grant made a visit to Washington and came to see us. This at once satisfied the diplomats that my husband was something more than the average man in Washington, and the result was that we saw more of the diplomats than did the ordinary members of the cabinet outside of the Secretary of State, whose official duties bring him in close contact with the diplomatic corps.

That Fall, when Mr. Blaine came back to Washington, his house was the head of one party and the White House of another. As the winter wore on, Mr. Blaine became an active candidate for nomination, and Mr. Arthur likewise.

After Mr. Blaine's return for the winter we saw much of the Blaine family, until one day Mr. Blaine said to my husband, "I can be nominated, but I cannot be elected. Arthur cannot be nominated. Why do you stay with him? You can be elected. If you will make me Secretary of State, you can be nominated at Chicago." My husband told him that he could not talk about a matter of that kind as long as he was in the President's cabinet.

Mrs. McElroy, Mr. Arthur's sister, who came to Washington that winter and occupied the White House as its mistress, was a very sensible woman. She said they feared

that in the event of General Arthur's being nominated, there would be many people who would consider him responsible for the assassination of President Garfield. This was because he had gone to Albany with Senators Platt and Conkling to aid them in their re-election to the Senate after they had resigned from the Senate when William S. Robertson was appointed collector of the port of New York at Mr. Blaine's instance, and contrary to what was claimed the agreement made by General Garfield before the election as to the distribution of the New York offices.

The great public question that was thrusting itself on the people when Chester A. Arthur succeeded to the Presidency, namely, the surplus in the United States Treasury—we were still under the war tariffs—he had seized with the grasp of a statesman. He was an educated, cultured, accomplished gentleman, honest and patriotic. He had been successful in the practice of his chosen profession of law, and possessed fine executive ability. His large experience as collector of the port at New York, where more than two-thirds of all the revenue of the Government derived from customs or tariff laws was collected, had given him a knowledge of the legislation, the details of administration, and the ramification and needs of the business interests of the nation that few men who ever served in Washington, whether in legislative or executive positions, possessed. His removal from the New York collectorship by President Hayes and Secretary of the Treasury John Sherman, in which James G. Blaine had had a hand, was purely for political reasons—one of the steps taken to prevent General Grant's third nomination in 1880.

Elected one of the delegates at large from the State of New York to the Chicago convention, General Arthur voted steadily as one of the 306 for Grant's nomination. After the break in the convention, which gave the nomination to James A. Garfield, Mr. Arthur was unanimously nominated for Vice-President, and, contrary to the wishes of Senator

Conkling and of Thomas C. Platt, promptly accepted.

Mr. Arthur did not regard his factional friendships as any warrant for ignoring the proprieties, the traditions, and the duties of the Presidency. He believed he could get away from the bitterness of the Blaine-Conkling quarrel and the attempt to nominate General Grant for a third term. He and his associates in the cabinet thought that the proper presentation to the American people, by his administration, of the right way to reduce the surplus in the Treasury, would carry with it at their hands a nomination and re-election in 1884. The people approved the Arthur plan of reducing the revenue, but the factionalism of that time prevented the nomination.

President Arthur had the power to nominate himself had he used his patronage and the prestige of his office. This is manifest from the party platform of the year. But aside from patriotic and moral considerations, he was wise enough, if it be put on another ground than that of policy, to refrain from the use of patronage and force to secure the nomination.

John Sherman, as Secretary of the Treasury, in his last report to Congress, December 1, 1880, "suggested" a reduction of the customs duties. He predicated it on the facts he called to the attention of Congress: The resumption of specie payments by January 1, 1879; the importation of \$97,000,000 gold for the year ending January 30, 1880, instead of exporting gold, as had been done every year since specie payments had been suspended in 1862; a surplus in the Treasury of \$37,000,000 after meeting the expenses of the government and the requirements of the sinking fund for the year ending June 30, 1880; and an estimated surplus of \$50,000,000 for the year to end June 30, 1881.

It was too early to recommend an actual revision; although the operation of the war taxes in time of peace had reduced the war debt \$850,000,000 since the debt had reached its maximum of \$2,750,000,000 on the 31st day of

August, 1865. Therefore Secretary Sherman recommended that Congress appoint a commission to investigate and report as to how the tariff schedules should be revised.

The surplus for the year ending June 30, 1881, increased *beyond* what John Sherman had estimated. It was \$100,000,000. So President Arthur and Charles J. Folger, his Secretary of the Treasury, urged upon the Congress which met in December, 1881, a reduction of the revenue as a means of reducing the surplus in the Treasury. President Arthur said: "I agree with the Secretary of the Treasury that the law imposing a stamp tax upon matches, proprietary articles, playing cards, checks, and drafts, may with propriety be repealed, and the law, also by which banks and bankers are assessed upon their capital and deposits; in short, all internal revenue taxes should be repealed except those upon tobacco and distilled spirits and fermented liquors. But that due regard may be paid to the conflicting interests of our citizens, important changes should be made with caution. If a careful revision cannot be made at this session a commission such as was lately approved by the Senate and is now recommended by the Secretary of the Treasury would lighten the labors of Congress whenever this subject shall be brought to its consideration."

On the 15th of May, 1882, Congress provided for such a commission, with instructions to report when Congress met December 4. The commission was appointed by President Arthur. He sent its report to Congress as that body had requested. The annual surplus had grown to \$145,000,000 for the year ending June 30, 1882. Both the President and the commission recommended a reduction of customs duties. The reductions as recommended by the commission averaged 20 per cent. Congress made a reduction that averaged about one per cent. Senator Sherman afterwards said that had the report of the commission been adopted, it would have taken the tariff out of politics for many years to come. But unfortunately, he did not take

that view of it when it was before Congress. He sided with the tariff barons and defeated its recommendations.

Colonel W. R. Morrison of Illinois, as chairman of the Ways and Means Committee of the Congress that assembled in December, 1883, and was in session when the National Republican Convention met in Chicago in June, 1884, reported a bill to reduce the tariff by a horizontal reduction all along the line, without considering the question of either revenue or protection. This report only gave rise to a great debate and its author was dubbed, "Horizontal Bill."

Mr. Blaine was opposed at this time to reducing the customs duties. He had advocated getting rid of the surplus by distributing it pro rata to the States.

My husband wrote his report to the President as Postmaster-General one night at our home. He urged the amendment of the postal laws as a means of suppressing the Louisiana Lottery; and recommended the extension of the railway mail service, cheaper postage, the reduction from three to two cents for ordinary letters, and opposed the government taking over the telegraph lines as part of the postal systems.

It was left to Secretary Folger, inasmuch as the annual report of the Secretary of the Treasury, under the law, was made to Congress, to confute Mr. Blaine's proposition to get rid of the surplus in the Treasury by distributing it to the States. The idea had originated in General Jackson's time, to dispose of the surplus derived from the sale of the public domain.

Mr. Folger had attained eminence as a jurist on the Court of Appeals of New York, whence Mr. Arthur had made him Secretary of the Treasury. The "knifing" he received at the hands of both the Blaine and Platt factions while the administration candidate for Governor of New York at the November election of 1882, when Grover Cleveland attained his unprecedented majority of 200,000, was most unjust and should not have affected him as it did — he almost

became a recluse. It was purely a political defeat, not a personal one. He was a widower and went but little into society. My husband's sympathy for him, his former judicial experience, and his zeal in Mr. Arthur's interests, as well as his conviction that the customs duties should be reduced, brought him in close touch with Mr. Folger, who consulted him about the line of argument he should use in confuting Mr. Blaine's proposition.

Blaine and the distinguished men of General Jackson's time were not referred to by name, but Secretary Folger constructed such a dispassionate judicial consideration of the proposition to get rid of the surplus by distributing it pro rata to the States, that it was never again advanced by any one, not even by Mr. Blaine. Then the Secretary followed with an irresistible argument in favor of the reduction of the customs duties. In his reports and in Mr. Arthur's messages is found the best practical exposition extant of the finances and the tariffs of the government, taking into consideration "*the conflicting interests of all the citizens.*"

Their ideas — to be departed from in 1888 — as well as the traditions of the party, were incorporated into the Republican platform of 1884:

The Republican Party pledges itself to correct the inequalities of the tariff and to reduce the surplus, not by the vicious and indiscriminate process of horizontal reduction, but by such methods as will relieve the taxpayer without injuring the laborer or the great productive interests of the country.

Colonel John W. Foster came home from Spain, where he was our representative, and helped organize the Arthur forces. But his mission was that of the diplomat and not that of the leader.

Thomas C. Platt in his "Memoirs" speaks of his cordial relations with President Arthur. But it is a fact that Platt was against Arthur's renomination. After the 1884 convention, Mr. Platt justified his opposition by saying that

when he had recovered from his failure to be returned to the Senate, after he and Roscoe Conkling had resigned and were working back into active politics, he wrote President Arthur a letter, which was not answered. After awhile another letter was written to Mr. Arthur. Receiving no answer to his second letter, Mr. Platt said he then determined on his course. I know Judge Gresham and Secretary Folger thought they had placated Mr. Platt. They had several interviews with him in New York, on behalf of Mr. Arthur and with Mr. Arthur's consent. The opposition of the administration would have defeated Platt's election as a delegate to the Chicago convention from the Tioga district. Mr. Platt, without pledging himself, had created the impression—I know it was Judge Walter Q. Gresham's and Secretary Folger's—that he would support Arthur. Henry M. Teller, a native of New York, and then Secretary of the Interior, a friend of Mr. Platt, also expected him to vote for Mr. Arthur. I know the Blaine people in Washington did not know that Platt was then with them because the New York *Tribune*, which was Mr. Blaine's chief organ, denounced the election of Platt to the Chicago convention. It said the Blaine people had been misled in the Tioga district, but at the Chicago convention Platt came squarely out for Blaine and made a speech in his support. Instead of resentment against Mr. Arthur, the real reason for Mr. Platt's vote was an understanding with Mr. Blaine.

General Logan was a candidate and so was Senator Edmunds. Mr. Blaine's friends were able to organize the convention. The Logan votes, which were confined to Illinois, were Blaine votes in disguise. After the second ballot they were transferred to Mr. Blaine, who was nominated on the fourth ballot. General Logan was named for Vice-President. I well remember the disappointment in Washington, especially among the women. Mrs. Blaine did not share the personal popularity of her husband.

Even young girls expressed regret that Mrs. Blaine might be the mistress of the White House.

Judge Folger died and Walter Q. Gresham was transferred to the Treasury Department. During the two months he was at the head of that department he made many investigations and inaugurated some reforms. In the campaign that followed he made a speech in New York at a meeting of the business men in Wall Street. He spoke as Secretary of the Treasury. The business men of New York had been unanimously for Mr. Arthur's nomination. This speech was prepared with special care. He did not deem it wise to say anything about Mr. Blaine's greenback record, but he did assail the record of Thomas A. Hendricks, the Democratic candidate for Vice-President, who had opposed the issue of the greenbacks as a war measure and then opposed their retirement, and at that time was demanding that the cash balance in the Treasury be applied at once on the war debt. A clear exposition of the financial legislation from 1860 down to that time was made, and the only practical way to keep the greenbacks afloat as a legal tender — a proposition that the business men could appreciate, my husband said — was for the government to carry enough gold in the Treasury to meet the greenbacks as presented. Governor Hendricks' plan to deplete the Treasury at once by applying all its cash on hand on the war debt would not do, could not be credited to his intelligence, and received the approval of no man of affairs. He made a clear exposition of the workings of the sinking fund, clearer than is set forth in any of the reports. Six per cent bonds with twenty years to run had been sold by our government for less than ninety cents. "Now the government can put out 3 per cents at a premium." The speech was in part reported in the *New York Tribune*:

No one at home or abroad doubts that our war debt will be fully and honestly paid if the Republican party is continued in power. The public credit has been so firmly established and the



public debt so largely reduced that we can now safely reduce taxation within the demands of the law creating the sinking fund. The law requires the purchase or payment of one per cent of the entire debt within each fiscal year and an additional amount equal to the interest upon all bonds previously purchased for the sinking fund. The government entered into a solemn obligation with its creditors to use in this manner a certain proportion of the revenue derived from the duties on imports. This engagement was entered into, it is to be borne in mind, at a time when the public credit was distrusted by many and the bonds were worth much less than now. In some years the debt had been reduced beyond the requirement of this bond. A liberal estimate will not require more than \$50,000,000 for the sinking fund of the current year, and we will have a surplus over this of, say, \$40,000,000 or \$50,000,000. The steady development of the country and the growth of its trade and commerce will increase the revenues under existing laws. There is, therefore, no necessity for maintaining our present rate of taxation, but, in view of the records of the two parties, is it not safer to trust the Republicans to manage our finances and to reduce taxation within reasonable limits? Why should the Democratic Party be trusted to accomplish this or any other good result in legislation or administration?

In revising our tariff laws and reducing our customs revenues, home interests should not be neglected. Indeed protection to our manufacturers and laborers can and should be afforded by taxing only such imports as come into real competition and admitting others free.

Mr. Blaine said it was the best speech made in New York for him that year, and he repeated this statement a year later when he passed through Chicago on his way to the Pacific Coast. After showing Walter Q. Gresham's judicial work in its chronological order, it may be interesting to observe how Mr. Blaine and the Republican party in 1888 departed from the platform of 1884 and from its previous history.

## CHAPTER XXXII

### ON THE BENCH AGAIN

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BECOMES CIRCUIT JUDGE FOR SEVENTH DISTRICT  
—INTIMACY WITH PRESIDENT CLEVELAND—MELVILLE W.  
FULLER'S APPOINTMENT AS CHIEF JUSTICE OF THE SU-  
PREME COURT—CORDIAL RELATIONS OF HARLAN AND  
GRESHAM—THE SUPREME COURT'S IGNORANCE OF PAT-  
ENT LITIGATION—THE LAWTHORP-HAMILTON CASE.

NOVEMBER 2, 1884, Walter Q. Gresham accepted an appointment as United States Judge for the Seventh Circuit to fill the vacancy occasioned by the resignation of Judge Thomas Drummond. The next day he left Washington for Indianapolis, to vote, then went on to Chicago, where on November 10 he began calling the chancery calendar. The next day he took up the hearing of cases and continued this, except for a number of trips to Washington, until late in the following August. Then after a short vacation he steadily held court again at Chicago, Springfield, Peoria, Indianapolis, Milwaukee, and Madison, until late in August of 1886.

The visits to Washington were made necessary by the suit of the Louisiana Lottery Company. The case went to the Supreme Court before it was finally disposed of. At first the law officers of the government, after the 1st of March, 1885, were not disposed to defend the ex-postmaster-general. But Mr. Cleveland took Mr. Arthur's position that, inasmuch as the exclusion of the Lottery Company's mail was done as an official act, the government should defend the suits. Overtures of the Lottery Company to settle were rejected.

It was early in Mr. Arthur's administration, during a

visit to Rochester, that Walter Q. Gresham first met Grover Cleveland. On one of his visits to Washington soon after Mr. Cleveland had entered the White House my husband told him not to fear the politicians, that the people wanted a practical, efficient administration; they would sustain the President while acting on these lines against any body of men in Congress. The Senate was then in the control of the Republicans, and he cited the case of Roscoe Conkling. The contest over appointments came with the Republicans, led by Senator George F. Edmunds, but popular opinion forced the Senate to recede.

On one of the visits to Washington Mr. Cleveland asked Judge Gresham if he would write and give his views when requested as to the fitness of men recommended for judicial positions. This was done in many instances. After we were members of Mr. Cleveland's administration, Daniel Lamont told me on one occasion that Cleveland had said to him that he had made a mistake in not appointing Judge Gresham Chief Justice instead of Melville W. Fuller. On the death of Chief Justice Waite there was a Republican majority in the United States Senate, and it was a problem to get a Democrat who could be confirmed. John Schofield of the Illinois Supreme Court was offered the chief justiceship and had Judge Gresham's indorsement, but Judge Schofield declined it because Mrs. Schofield did not want to go to Washington to live. Schofield's opinions, in the Illinois reports, show that he would have graced the position.

The objection that Melville Fuller had been a "Dough Face" during the war long deferred the sending in of his name to the Senate; it was feared he could not be confirmed. Judge Gresham urged upon the soldier element, and especially on some of those who were lawyers, that such consideration should no longer obtain in determining the qualifications of men for judicial positions. He persuaded Senator Charles Farwell of Chicago, a practical

business man, to agree in advance to vote for Fuller's confirmation. He sent men like General Charles Fitzsimmons, who had been not only a good soldier but also an Abolitionist, to Senator Cullom to suggest the propriety of agreeing to support Fuller. The promise of both the Illinois senators to vote for Fuller made his appointment certain, and his name went in to the Senate for confirmation.

In the face of similar objections to the appointment of Joshua R. Allen as United States District Judge for the Southern District of Illinois, Judge Gresham, when requested by Mr. Cleveland to state his views as to a number of Illinois lawyers who were suggested as suitable to succeed Judge Treat, recommended Judge Allen's appointment, and afterwards, when it was made, defended it. The circuit judge refused Senator John M. Palmer's request to recommend to Mr. Cleveland one of Senator Palmer's own sons for the position. This gave the Senator a grievance, but after a time he mellowed.

When Walter Q. Gresham went back on the bench, the Seventh Circuit was composed of the States of Indiana, Illinois, and Wisconsin. In Wisconsin Charles E. Dyer was still the district judge in the Eastern District, but Romanzo Bunn had succeeded Judge Hopkins in the Western District. Henry W. Blodgett was still the district judge in the Northern District, and Samuel H. Treat in the Southern District; William A. Woods, who had succeeded Walter Q. Gresham, was the district judge in Indiana. The circuit judge could not hold the District Court while the district judge could sit in the Circuit Court. The circuit judge had appellate jurisdiction over the District Court in some classes of litigation.

John M. Harlan was the member of the Supreme Court assigned to the Seventh Circuit as the circuit judge. It was an open secret that had there existed a vacancy, Mr. Arthur would have appointed Judge Gresham to the

Supreme bench, and members of the court intimated they would be glad to have him join them.

The law contemplated, if it did not require, that the circuit justices should visit each district once in every two years. But the Supreme Court was so far behind that the visits of the circuit justices to their circuits were at long intervals and were as short as possible. When the Supreme Court was not in session, its members were engaged much of their time, Judge Harlan wrote, in consultation and in writing opinions. A great deal of work thus devolved on the circuit judge. The correspondence between Justice Harlan and Circuit Judge Gresham about the business in the Seventh Circuit and also about personal matters, was cordial and voluminous. There was also much correspondence with the district judges and with Howell E. Jackson, the circuit judge in the Sixth Circuit.

Of the correspondence with the judges, much with Justice Harlan and District Judge Woods of the Seventh Circuit, and with Circuit Judge Howell E. Jackson and District Judge Sage of the Sixth, was in relation to railroad receiverships. When Walter Q. Gresham went back on the bench there were the "Narrow Gauge," the Illinois Midland, and the Wabash Railroad receiverships. The first two were then most alive. Soon others followed. The Wabash was to become the most celebrated.

The Narrow Gauge was a system of railroads extending from Toledo, Ohio, to St. Louis, Missouri, with a branch from Delphos, Ohio, to Cincinnati, and a branch from this line at Dayton, Ohio, to Ironton on the Ohio River. The corporation which had built it, the Toledo, Cincinnati & St. Louis Railroad Company, was hopelessly insolvent, with all kinds of creditors. The Illinois Midland Railway Company acquired a line from Peoria through Atlanta, Decatur, and Paris, to Terre Haute, Indiana. On both these lines construction had been poor and earnings small.

Judge Harlan wrote that on the Midland there were

no less than eighteen series of Receiver's certificates, aggregating \$700,000—more, he was afraid, than the entire line would sell for. "The Midland case is the worst I ever heard of," he declared. "More than a year ago, January 2, 1885, I was over-persuaded to take hold of it. Judge Drummond would not, and Judge Treat will make no further order in the case unless some other judge will sit with him." Judge Treat was then far beyond three score and ten and eligible for retirement, but, like many Federal judges, he held on until death removed him, although he should have retired years before.

Judge Harlan said that Judge Treat "should not have allowed the issuance of so many Receiver's certificates, but you must not let him know I am criticizing him. I want you to help me out in this case. It will take us a week to hear it. I will come to Chicago at the February, 1885, adjournment of the Supreme Court and we will hear it together, and then you can dispose of it. It is too much to ask another judge to take it up anew." This was to be the final hearing, but Justice Harlan's work held him in Washington, so the joint hearing did not take place.

Meantime the Narrow Gauge case was being crowded along by Judge Gresham to a decree of sale, so as to get it out of court. Joint hearings were held with Judges Jackson and Sage of the Sixth Circuit, at Cleveland and Cincinnati. Expenses were reduced to the minimum; the daily train service consisted only of one "mixed" train each way. Rolling stock which had been purchased on time beyond what seemed to be the needs of the road, was tendered back to the rolling stock companies with the choice of suing the corporation and the Receiver in so far as he had ratified the contracts of sale, or demanding a fair rental value for the time the cars were held by the Receiver. No Receiver's certificates were issued, but the road was sold subject to the right of the court to order the payment by the purchaser of the claims of the rolling stock claimants

out of the proceeds of sale prior to the mortgage bondholders, provided the court so decreed, with a right of appeal to the Supreme Court, the property itself remaining as security for the final payment of the claims if so allowed. Meanwhile a committee representing the bondholders was "provisionally" given possession of the railroad and the rolling stock. By this method the road was promptly released from the hands of the court, and the contingency of the bondholders buying in the property at a song was guarded against.

"I am glad you are making such good progress with the Narrow Gauge case," wrote Justice Harlan in May; 1885. In June, 1885, he came to Chicago, and after the hearing, entered a final decree in the Midland case. The laborers were paid first, and most of the Receiver's certificates were held to be valid, although some were issued under orders of the court without notice to the bondholders, and, technically, were invalid.

The bondholders in the Midland case wanted to appeal, so Judge Harlan wrote Judge Gresham, August 11, 1885, that he had telegraphed the attorneys for the bondholders to appear before him, Judge Gresham, and let him fix the bond that would supersede the decree. "An appeal to our court," wrote Justice Harlan, "will tie up the distribution to the laborers and small claimants for three years, and that ought not to be. Make the penalty in the bond large, unless the bondholders, appellants, will agree that the appeal may be taken up on brief or short time after the record gets here, and I will get the court to pass on it promptly. The laborers ought to be promptly paid."

Justice Harlan's letter, twelve pages long, written with his own hand from Winchester, Virginia, his country home, is a better exposition of the Midland case than his official opinion. In this letter he said he realized the justice of the criticisms of the delay in disposing of the Midland litigation, although he had no fears for himself, adding that he

had been threatened with bodily harm in anonymous communications, because of the delay.

But the time had expired—sixty days from the entry of the decree—within which a circuit judge could enter an order approving an appeal bond to stay the operation of the decree appealed from; that is, make the appeal a *supersedeas*. As the law then was, only a justice or the Supreme Court itself, after sixty days from the time of entry of the decree, could name the penalty in, and approve the appeal bond, so as to make it a *supersedeas*. The attorneys, therefore, had to go to Washington for this purpose. Justice Harlan made them agree to advance the cases before he would approve their appeal bond, and the next Spring this appeal was passed on by the Supreme Court and all that Justice Harlan had done was approved. In upsetting vested interests, Judge Gresham in the Narrow Gauge case did not go beyond Justice Harlan in the Midland case—indeed, he did not go so far. Further mention of these appeals will be deferred until we come to the appeals in the Narrow Gauge case, which took the regular course and were not passed on until 1891, when the Supreme Court administered a rebuke to Judge Gresham for what in the meantime he had done in the Wabash receivership.

Always ready to do his share of the Circuit Court work, except in patent litigation, Justice Harlan was sometimes compelled by the increased work in the Supreme Court to cancel appointments he had made to visit the circuit, and then he would write to tell the attorneys, "I will give them the morning hour in Washington before the Supreme Court meets and in the evening after adjournment." That the overcrowded dockets in the Northern District of Illinois might be relieved, Justice Harlan wrote how he and Justice Blatchford construed certain sections of the statutes so that judges from other districts might be summoned to that district to hold court and be allowed \$10 per day for their expenses. It was manifestly unjust for Congress to



make laws that permitted the poorly paid district judges to be called from their districts to hold court in other districts without making specific provisions for their expenses when so engaged. So the suggestion of Justice Harlan as to this construction of the statute was promptly adopted. With the aid of Justice Harlan and the other district judges in the circuit, the dockets at Chicago and throughout the circuit were cleared and pace was kept with the increasing business at Chicago. After several years, Judge Gresham and his associates on the district bench were able to write Justice Harlan, "There are no cases undisposed of that need your attention on the circuit."

I have already commented on the aversion of many of the Supreme Court judges to handling patent litigation. Justice Harlan frankly avowed his position. I quote from one of his letters as an example. March 20, 1887, he wrote Judge Gresham: "Let me say that I am in good condition now, and will take hold of any business you may put on my dockets except patent cases which involve scientific investigation. I have no fancy and but little aptitude for that branch of the law."

Other judges, both on and off the Supreme bench, concealed their ignorance behind the formula, "No invention, no novelty." Some judges adopted the principle that, *prima facie*, all patents are void, and then bent their mental energy to sustain this pre-conceived opinion. Judge Gresham was not in this class. After his return to the bench his first reported opinion is in a patent case, delivered two weeks after he began his work, November 25, 1884. During the eight years he continued on the bench he passed on patents involving all kinds of machinery and electrical appliances. In a majority of the cases the patents were sustained. The fact that it was asserted there was manipulation and political and other influences at work in the Patent Office at Washington, was not prejudicial to any patentee until the contrary was shown. He was not afraid

to sustain a monopoly within the law, indeed, he considered it his duty to do so. Chauncey M. Depew said it would never do to nominate Gresham because he upheld the Driven Well patent. He was sustained in this decision by a divided Supreme Court, four to four. It takes a majority to reverse. At that term there was a vacancy by reason of the death of Justice Clifford. But neither side wrote an opinion.

John W. Munday, one of the best patent lawyers of his time, filed for his client a bill, *Lawther vs. Hamilton*, in the United States Circuit Court for the Western District of Wisconsin, for an injunction and damages, in which the claim was made that General Hamilton, who was then United States Marshal for the Western District of Wisconsin, was "infringing Letter Patent No. 168164, granted September 28, 1875, for an improvement in the process of crushing linseed, flaxseed, and other oil seeds, and extracting the oil therefrom." It became the property of the Linseed Oil Company or Trust. There was a hearing by Judge Dyer, who, instead of deciding the case, ordered a rehearing at which he asked Judge Drummond, who was still the Circuit Judge, to sit with him.

Two years after the bill was filed, June 2, 1884, Judge Drummond sent for Mr. Munday and said, "We are going to decide this case against you. I wish you would tell me where that authority is that sustains our position."

"But, Judge, I am on the other side."

"Yes, but you are an officer of my court, and are familiar with the authorities."

"But there is no such authority."

Finally Mr. Munday said, "Judge, there is a textbook on patents in which there are authorities both ways. This much I will concede, but the authorities that tended your way, Judge, were not well considered, and do not apply to this *Lawther* case." Afterward, Mr. Munday said, "I got the textbook on Patents and took it to Judge Drummond.

They beat me all right, but Judge Dyer, after all, wrote the opinion."

Lawther followed his lawyer's advice and appealed to the Supreme Court, where Munday argued the case. In an opinion by Justice Bradley, the Supreme Court reversed the decree of Judges Drummond and Dyer in dismissing the bill, and remanded the case with directions to sustain the patent, ascertain the damages for its infringement, and enter a decree for that amount in Lawther's favor.<sup>1</sup>

Judge Dyer referred the case to Master in Chancery Ryan, who, after a year's time, reported the damages at six cents, while Munday claimed that under the evidence he had proved up damages to the amount of \$63,000. After the case was reversed, Judge Drummond, who had retired and had been succeeded by Walter Q. Gresham, adhered to his opinion and said the Supreme Court was wrong. Munday excepted to Master Ryan's award of six cents damages and went to Judge Gresham and demanded a hearing. General Hamilton's total wealth was just about \$63,000 on a forced sale. I now quote Mr. Munday:

"Judge Gresham gave us a decree for \$53,000. He always was for leaving the debtor something, and when there was no exemption law applicable, he stretched the equity rules. It was thus he left the old general \$10,000. Meanwhile, the National Linseed Oil Company had bought out Lawther. I reported the situation to my client: that while Judge Gresham ought to have given a decree for \$63,000 I guess he just concluded to leave the old general \$10,000, that notwithstanding Judge Gresham's award, General Hamilton still thinks he is right, and while I shall collect the \$53,000 if the general does not appeal, I think it would be just as well for us to settle.

" 'At what figure will you recommend a settlement?' asked the president of the company.

" 'Five thousand dollars.' "

<sup>1</sup> *Lawther vs. Hamilton*, 124 U. S. 1.

“‘Do you recommend that as a lawyer or as a man?’

“‘As a man, and incidentally as a lawyer.’

“‘There will be a directors’ meeting this afternoon, Mr. Munday, and I will submit your proposition to them.’”

The directors authorized Mr. Munday to settle the case as he had recommended.

After General Hamilton had paid the lawyer the \$5,000, Mr. Munday told Judge Gresham how he had closed the case. Judge Gresham said, “I am glad of it. There was nothing else for me to do under that Supreme Court mandate. But I will never again feel that corporate management is quite as bad as in many instances I have thought it.”

A comparison of the opinions of Justice Bradley and Judge Dyer in this Lawther case, in view of the word “doubt” in Justice Bradley’s opinion, warrants the view that Judge Dyer had as strong and clear a grasp of the subject as Justice Bradley, and that, too, although there was no such an authority as John W. Munday says Judge Drummond thought there was.

He is a wise lawyer who knows when to let go. Confronted with the real consequences of its decree or opinion, although supported by all of John W. Munday’s ability—for he was an advocate as well as a mechanic, one of the best in his special line—the Supreme Court might not have stood “hitched.”

Unlike Judge Drummond and other judges, Judge Gresham never from the bench criticized nor side-stepped the mandates of the Supreme Court. He obeyed them in good faith. Sometimes he would threaten to resign rather than follow them, and the fact is he did finally resign and would never have gone back on the bench had he lived. Off the bench, in his capacity as a man and the master of his profession, he criticized the processes and conclusions of his brethren. To-day I am glad to say that the mass of the judiciary are interpreting the law more in the

spirit of humanity and justice than prevailed at the time of which I am writing.

As a circuit judge, Walter Q. Gresham heard and conferred with Justice Harlan and the district judges in the Seventh Circuit in all kinds of cases cognizable in the Federal courts. In most cases it was after argument in open court. Sometimes there would be oral conferences, sometimes by letter. His reported decisions are found in the Federal Reports, beginning at Volume 22 and running to Volume 56. Some of these openings show that they were submitted to Justice Harlan, although he was not present at the hearing of the particular case.

Not always was there harmony between Circuit Justice Harlan and Circuit Judge Gresham, and the latter, aside from "the rebuke," did not always reflect in advance the opinions of the Supreme Court. And when it comes to patent litigation, the reader certainly will not censure the circuit judge for not deferring to nor even considering the circuit justice, for he himself had ruled himself out. Melville W. Fuller was without experience in patent litigation while at the bar. He avowed his dislike for it after he became Chief Justice and his opinions disclose this aversion, as do the opinions of other members of that Court when appeals in patent litigation went to it. Now, under the Circuit Court of Appeals Act, which members of the Supreme Court were not without influence in drafting, practically all of the patent litigation ends in the Circuit Court of Appeals. May 3, 1892, when the Court of Appeals had only been fairly organized, Justice Harlan wrote, "I am perfectly willing to give all the time while I am in Chicago to Court of Appeals business, *excluding patent cases.*"

Constitutional questions are easy compared to "*patent cases which involve scientific investigation.*" But no less important to the body politic may be the correct determination of the patent case. During my husband's time,

Justice Joseph Bradley was conceded by patent lawyers to be an exception to the rule. Partisan though he was charged with being, in ability and learning he was a master of all branches of his profession, including patents. But his opinions, with due deference to the patent lawyer, do not disclose a grasp and knowledge of this branch of the law as do the opinions of Henry W. Blodgett, the United States Judge for the Northern District of Illinois during the period Justice Bradley sat on the Supreme bench. At the bar, both men had had varied and wide experience; neither much, but Blodgett more than Bradley in patent litigation. Appointed to the Federal bench about the same time, one to the Supreme bench where there was but little patent litigation and that of an appellate character, the other to the district bench in a district where there was perhaps more patent litigation than in any other district in the country, the one hearing one patent case to a score heard by the other, Judge Blodgett in the very nature of things developed into the more efficient patent judge. When it comes to recommending lawyers for appointment to places on the Federal bench, the patent lawyers as a class have never united in recommending one of their own number. They seem to prefer the appointment of a lawyer without experience in this branch of the profession. The objection that the patent lawyer is only a mechanic always has weight with the appointing power. But the fact is that there are patent lawyers who are not only mechanics but accomplished lawyers and men of the highest sense of honor. Manifestly there ought always to be at least one man on the Supreme bench a master of this branch of the law. Because patents are monopolistic in their tendency is no reason for withholding, but it is a reason for scrutinizing with the most zealous care the grants of all patents. If wrongfully granted and collusively maintained—the lawyers on opposite sides, working to this end, in a way that only an expert can detect—they must be withdrawn.

Inefficient judges are bad for the litigants, but they make business for the lawyers.

As specifically illustrating Walter Q. Gresham's work during the eight and one-half years he was on the Circuit bench, and until he entered Mr. Cleveland's cabinet as Secretary of State, I will resort to the case system. I will give the history of a patent case, a case that was on both the law and the chancery sides of the court, and the Wabash Railroad receivership.

## CHAPTER XXXIII

### THE PULLMAN PALACE CAR PATENT CASES

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THE SESSIONS IMPROVEMENT IN THE CONSTRUCTION OF RAILROAD CARS—ADOPTED BY THE PULLMAN COMPANY—THE PULLMAN COMPANY ENJOINS THE WAGNER COMPANY FROM USING THE SESSIONS IMPROVEMENT—HEARING BEFORE JUDGES GRESHAM AND BLODGETT—PULLMAN COMPANY SUES VARIOUS RAILROADS—GRESHAM'S FAMOUS OPINION—CONSOLIDATION OF THE PULLMAN AND WAGNER COMPANIES.

THE Pullman Palace Car Company *versus* the Wagner Palace Car Company was a most important case, outside the great financial interests involved. It is typical as illustrating the manipulation and influence that may be exercised in the Patent Office and higher up, the attempts of able counsel to manipulate the courts in the interests of their clients, and the folly of a great commercial and executive mind attempting to assume the role of an inventor.

April 27, 1887, Henry Howard Sessions, the general superintendent of the car shops of the Pullman Palace Car Company, at Pullman, Illinois, filed an application in the patent office for a new and useful improvement in the construction of railroad cars. Immediately Sessions assigned whatever right he had in this application to the Pullman Palace Car Company. At this time Sessions was forty-five years of age, and for three years had been superintendent of the Pullman works. At fourteen he had begun work as an apprentice in the shops of the Central Vermont Railroad Company, and had passed through all the grades up to that of superintendent, and as such had charge of the car building department of various railroads and corporations



whose sole business was that of building railroad cars. He had made or helped make every part of railroad passenger and freight cars. He was a draftsman of skill and was experienced in the phraseology of patents.

In 1873, while superintendent of the car shops of the Rome, Watertown & Ogdensburg Railroad, Sessions made the first drawing of his invention. His object was to reduce the shock of collisions and to prevent the oscillations of cars when running rapidly and around curves, especially experienced by persons occupying upper berths in sleeping cars.

The means to this end is a frame-shaped plate applied vertically from top to bottom and transversely to the end of the car. This frame is projected a short distance beyond the end of the car by back springs which, when the cars are coupled together, keep the rough surfaces of the plates on the coupled cars in frictional contact by the back pressure. There are springs at the top of the car, but the main spring is at the platform, and part of the force is transmitted along the plates to their top. Between the face plates and the springs are "piston rods." These piston rods are attached, one end to the face plate, the other to the end of the spring in the body of the car. The piston rods can be seen on any Pullman or vestibule car above the canvas or rubber hood which connects the face plate and the end of the vestibule. Neither the hood nor the vestibule was part of the invention, and Sessions made no claim to them as such. They were old devices.

In rounding curves the inner springs contract while the outer expand, and thus the opposing face plates are in constant frictional contact, which holds the cars together without oscillation, and diminishes the force of shocks when in collisions.

The president of the Watertown Company said Sessions' plan was all right, but that the finances of the railroad would not permit of its adoption. George M. Pullman was the first man in an executive position on a railroad or

in a car manufacturing plant who enabled Sessions to put his device into practical operation. He must be given due credit for seeing what other men rejected, but this does not entitle him to rank as an inventor or discoverer. A complete vestibule train equipped with the Sessions device was finished before the patent was applied for. This train was exhibited at Chicago, Pittsburgh, Philadelphia, and in New England cities.

Always the pioneers in railroading and the ablest in their line, the men in control of the Pennsylvania Railroad Company promptly caused it to make a contract with the Pullman Company for the use of two complete Pullman trains equipped with the Sessions device to run opposite each other as the first 24-hour trains between Chicago and New York, called "The Limited." The Pennsylvania also acquired the right to use the Sessions device on its own cars, and embodied this provision in the contract: "The Pullman Company would not license the use of the Sessions invention to any of the competitors of the Pennsylvania Company." This stipulation was aimed at the New York Central, the only competitor of the Pennsylvania for passenger traffic that desired the fast time between New York and Chicago.

December 15, 1887, the patent issued, but to the Pullman Company as assignee. A few days later the Pullman Company brought its suit against the Wagner Company to enjoin it from using the Sessions improvement. The Wagner Company was then operating, and had for a long time prior to that time operated, sleeping cars on the New York Central Railroad and its subsidiary lines. The Wagner Company, without any leave or license, had begun to use the Sessions device soon after Sessions made his application for the patent.

The Wagner Company denied there was any novelty or utility in the Sessions patent. It named thirty-four English and American patents that it claimed anticipated it, and

denied that before it was issued as a patent the application of Sessions was subjected to any critical or exhaustive investigation in the Patent Office. These denials were followed by the assertion that many times was Sessions' application rejected, "*and that the examiner finally yielded, as constantly happens in such cases, only to the importunity of the applicant.*"

The testimony included that of patent experts and railroad men of all grades, from mechanics and shop men down to railroad presidents. The thirty-four patents were critically examined by the experts and the court, but no evidence was offered in support of the assertion that the Wagner Company had made in its answer as to the Patent Office.

The case on final hearing came before Judges Gresham and Blodgett. They agreed in sustaining the patent and awarding an injunction to the Pullman Company, with damages to be ascertained by a master, to whom the case was referred for this purpose. No appeal was prayed. Instead, the Wagner Company gave the Pullman Company a bond conditioned that it would pay the Pullman Company whatever damages the master might find it was entitled to. That there was utility in the Sessions device is conclusive from the statement at the time of Watson S. Webb, president of the Wagner Company: "We simply must have it or abandon our trains."

Benjamin F. Thurston, Offield and Towle, and Runnells and Burry appeared for the Pullman Company, and George Payson and Coburn and Thacher for the Wagner Company. All except Runnells and Burry had for years limited their practice to patent litigation. Benjamin F. Thurston was recognized as the ablest advocate of his time in his specialty. George Payson had for years been the chief adviser of the Western Railroad Association in all patent litigation and in all questions relating to patents that might affect railroads. The Western Railroad Association was composed of practically all the railroad corporations

operating railroads west of Chicago. Coburn and Thacher were eminent in their specialty.

The case was most ably and elaborately argued. The principal argument in support of the validity of the Sessions device was made by Mr. Thurston. Careful consideration by the two judges in conference was given to the testimony, which made a volume of a thousand printed pages. There were exhibits and models. After the conclusion was reached, the opinion to justify the conclusion was prepared by Judge Gresham with the concurrence of Judge Blodgett. It was then held for a time to make any change that might occur on further reflection. During this time the manuscript was placed in my hands for safe keeping. Of course, I read it. It was as plain to me as the description my husband had written me of the oven the soldier had built in his tent when in Kentucky in November, 1861. Besides, when it came to running a sewing machine and fixing it when it got out of order, no woman could beat me at that.

One day at noon the judges announced they would decide the case at 2 o'clock of that day. After the case was decided, Mr. John W. Doane, who was a great speculator and interested in Pullman stock, even if he was head of a bank, said to me:

"That was an important decision of your husband's the other day."

"Yes," I replied. "I knew of it for days."

"Had you told me of it we could have made a lot of money," said Mr. Doane.

"That is something that never happened through me — a leak," I answered.

Like many another woman whose position put her in the possession of information the knowledge of which would be of great value to newspaper men and women, men of affairs and speculators, I have been approached in various disguises to learn that of which it was natural to suppose I was cognizant. But never once was I "pumped."

All other resources failing, like many another woman I have feigned that stupidity that left my interrogator under the impression I was the most ignorant woman on earth.

The concluding portion of this opinion was as follows:

It required more than mere mechanical skill to see that the pressure of the platform buffer springs could be made effective in vertical lines between the superstructures of the cars as well as in the longitudinal lines of the platforms. Sessions discovered a means whereby our long high American cars might be made to run as steadily as the low short English cars, and the fact that for years his now simple device occurred to none of our many car builders is a circumstance strongly favoring the claim that his invention possesses novelty. If his device, or anything like it, and capable of producing the same useful results, was known in the prior art, it is remarkable that its practical utility was not recognized sooner and understood. All prior buffing structures lacked what was necessary to give them the effective force that the Sessions elevated spring buffer plates are capable of exerting. We have already seen that the value of the Sessions improvement as a means of diminishing the force of shocks and counteracting the tendency to sway when in motion, was promptly recognized by the principal railroads of the country; while utility is not conclusive proof of invention, it is strongly suggestive of it. Owing to the differences between American and English cars, there was greater necessity for additional means of steadying cars of the former class than of the latter, and yet no one suggested the elevated buffer plates. *The defendants are at liberty to use the vestibule structure without the Sessions invention*, as well as all the various prior trifling devices, whether described in patents or not, and yet they persist in asserting their right to use the Sessions buffer plates while denouncing them as worthless. If they are sincere in thus characterizing this improvement, why do they squander money in attaching it to their cars? Practical railroad men do not adopt and use devices that are of no value.

This opinion upholding the Sessions patent was read April 17, 1889. On May 13, 1887, sixteen days after the application for the Sessions patent had been made, George

M. Pullman filed in the Patent Office his application for a vestibule connection for railway cars. Its chief factor was the Sessions device. In time Pullman came to claim that his patent covered the Sessions device, and that he was the inventor of it. But it was not until May 14, 1889, after several rejections, many amendments, and one disclaimer, that George W. Pullman was granted a patent, No. 403,137. This patent Mr. Pullman promptly assigned to the Pullman Company. The Patent Office seemed to see its way clear to grant a patent on the combination of the vestibule, which the opinion of April 17, 1889, had said was no novelty, with the Sessions device.

May 31, 1889, the Pullman Palace Car Company brought a suit in the Circuit Court of the Northern District of Illinois against the Lake Shore & Michigan Southern Railroad Company, and W. S. Webb as president of the Wagner Palace Car Company; and on July 23 of the same year, the Pullman Company brought another suit against the Michigan Central Railroad Company and W. S. Webb as president of the Wagner Palace Car Company. In both suits the prayer for relief was the same, an injunction against using the Pullman device as described in patent No. 403,137.

At this stage it will not take a patent lawyer to see that the Pullman patent was suggesting a cloud on the integrity of the Sessions device. The law is, that a grant of letters patent from the government can run only to the patentee or his assignee. The application for the patent must be in the name of the patentee. If Pullman was the real inventor, and not Sessions, a fraud had been committed and the patent was void.

Meantime a suit based on the Pullman patent had been commenced in the Circuit Court for the Eastern District of Massachusetts by the Pullman Company against the Boston & Albany Railroad Company and W. S. Webb, president of the Wagner Palace Car Company.

October, 1890, Judge Colt sustained the Pullman patent and issued an injunction against the Boston & Albany Company and President Webb. Thereupon the Pullman Company pressed its claim that, as a matter of comity, it was entitled to injunctions in the two suits still pending in the Northern District of Illinois.

George Payson was one of the counsel who appeared before Judge Colt for the Wagner Company. Benjamin F. Thurston did not appear in that litigation for the Pullman Company, and did not appear in the second hearing in Chicago. The absence of Mr. Thurston, Judges Gresham and Blodgett construed as most significant. "Thurston does not uphold the new Pullman patent, and he abates not one jot or tittle of what he said in favor of the validity of the Sessions device"—a man of honor before all else. Benjamin F. Thurston's obligation was to the court that had followed his argument in the Sessions case, and to his profession and the truth.

On the announcement of Judge Colt's opinion, the speculators sold the Pullman stock down, and Judge Colt's brother, Colonel Richard Colt, who had loaded up with Pullman stock, lost a large amount of money.

November 11, 1890, after hearing the argument on the Pullman Company for an injunction, the case was taken under advisement by Judges Gresham and Blodgett. January 20, 1891, they made their decision, and again Judge Gresham wrote the opinion. After reciting what had occurred in Judge Colt's court, the opinion proceeds:

Under the well-established rule of comity, the decree in the Boston case entitles the complainant to the injunction prayed for, unless the court which rendered the decree gave a construction to the Sessions patent at variance with this court's construction of it.

This court sustained the Sessions patent on the ground that the equalizing mechanism was capable of keeping the frame plates in frictional contact, not part of the time, *but all the time*,

on sharp curves like those of the Baltimore & Ohio Road, as well as on tangents.

The complainant in that suit, the former suit before Judges Gresham and Blodgett (and the parties in that and this suit are the same), insisted that this was the correct construction of the Sessions patent. And yet, in the face of its former ruling, this court is now asked to hold that the Sessions equalizing mechanism will not keep the frame plates in constant contact: that in turning curves the plates on the inner side will touch only on the outer (inner) edges, while on the outer side of the curve they will not, or may not, touch at all.

The same solicitors prepared both patents and drawings; and, although the latter are exactly alike, it is claimed that they were intended to represent two different equalizing devices. The construction which Sessions now places upon his patent cannot be reconciled with his testimony in the Sessions suit.

Then the affidavit of George M. Pullman, which had been filed in the Sessions suit and used on the application for the preliminary injunction in that case, was brought forward by the judges and commented on. No reference was made to it by the Wagner attorneys in the second suit.

Part of the Pullman affidavit follows:

These vertical spring buffers project beyond the vertical planes of the cars, so that on the coupling of the two cars the adjacent frames of the cars compress the springs which back them, *and therefore the faces of the plates are held against each other in frictional contact.* The result of this construction is that the tendency of the cars of a train, when running at high speed, to have oscillations or vibrations set up, is almost entirely dissipated.

As an evidence of the steadiness with which trains run, and their freedom from that oscillatory movement which belongs to all other descriptions of trains when running at high speed, I will state that there is provided in one of the cars of the train a barber's room. The barber's chair in this room is daily occupied by persons who desire to be shaved upon the train; and I state that there is but little more danger or risk in undergoing shaving at the hands of the barber with a common razor on this train, when running at forty miles an hour, than there would be in an ordinary barber's shop in Chicago. I have found that the



oscillation of the cars has become greatly diminished in consequence of the application of the spring friction plates in contact, interposed between the superstructures of adjacent cars of the train, and that the upper berths of sleeping cars are no longer objectionable on account of the swaying movement.

Then the opinion proceeds:

The Sessions patent, as we are now asked to construe it, would fall far short of accomplishing these beneficial results. In his original application Pullman claimed the vestibule and the bellows. He did not there claim what was finally allowed as the distinguishing feature of his patent. In none of his numerous original claims did he embrace the oscillating motion of the arch-plate and footplate. It may be fairly inferred that his first application was prepared with reference to the disclaimer of the vestibule and bellows in the Sessions application. His original application and claims were all cancelled, and more than a year after the date of his first application he filed a new specification and claims, and it was in these that he first claimed the equalizing mechanism, with its motions and restraints of motions. This application was rejected February 9, 1889, the commissioner holding that the applicant had not invented a single element; the 'particular equalizer' being shown in the Janney and Sessions patents, and the frame plate in the latter patent. . . . Some weeks later, the application, which had been rejected on the ground that the Sessions patent showed the frame plate and the 'particular equalizer,' was allowed, and the patent in suit issued. On April 1, 1889, Pullman made and forwarded his affidavit to the Patent Office, in which he stated that he had reduced his invention to practice on a train of cars before Sessions filed his application. Some weeks later, the application, which had been rejected on the ground that the Sessions patent showed the frame plate and the 'particular equalizer,' was allowed, and the patent in suit issued. The affidavit did not say that Pullman was the first inventor, and it did not follow that, because he first reduced the invention to practice, he, and not Sessions, first perfected the invention. It did not deny that the Sessions patent showed the 'particular equalizer'; on the contrary, its presentation amounted to an acquiescence in the correctness of the

commissioners' ruling on that point, and a claim that Pullman was entitled to a patent because he was the first inventor.

We have referred to the fact that the parties to this suit were the litigants in the Sessions suit. In the latter suit the complainant obtained a decree on the theory that Sessions was the first inventor of the equalizing mechanism for which a patent was finally granted to Pullman. That decree remains in force. It is chiefly on the testimony of Sessions in this suit and the Boston suit that this court is now asked to hold that he was not the first inventor. That testimony cannot be reconciled with material portions of the testimony of the same witness in the Sessions suit. To what extent, if at all, the decree in the Sessions suit is conclusive upon the complainant in this suit is a question which we prefer to reserve until the final hearing. Injunction denied.

There was perturbation from which Mr. Pullman and his lawyers never recovered. Newspaper editions containing that last decision were bought up and destroyed. The opportunity that was thus given the Wagner Company and the secret committee of patent lawyers who represented the railroads of the country—the Vanderbilt interests including Chauncey M. Depew, who had criticized the opinion in the Sessions suit—to question the cloud that George M. Pullman had put on the Sessions patent, was not taken advantage of. The Pullman and Wagner companies settled all their differences and consolidated under the name of the Pullman Company. Railroad men who had assailed the Sessions patent bought stock in the Pullman Company. Never again did a Pullman lawyer, a Wagner lawyer, or a lawyer for the Western Railroad Association enter the United States Circuit Court for the Northern District of Illinois in the lost Pullman-Wagner case. The case stood as it did the day the preliminary injunction was denied, January 20, 1891, until April 30, 1900, when on the general call of the docket no one appeared either for the Pullman or the Wagner Company or for the Government, and the suit was dismissed for want of prosecution.

The fact that the defendants and the patent attorneys for the Western Railroad Association did not avail themselves of the court's offer to re-litigate the validity of the Sessions patent, suggests two inferences: one that the second suits were collusively framed between the Pullman and Wagner companies, as often happens when two combinations are fighting for a patent—when one is defeated in the first instance, instead of continuing the contest, they unite and endeavor to extend the monopoly thus obtained; second, the judgment in the first suit, supported as it was by the opinion in that case, and Thurston's absence from the second suit, could not be overthrown. In legal ability and knowledge of patents Judge Blodgett was without a superior on the Federal bench.

## CHAPTER XXXIV

### IS "EQUITY A ROGUISH THING?"<sup>1</sup>

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THE CELEBRATED ANGLE CASE—H. C. ANGLE UNDERTAKES TO CONSTRUCT THE ST. CROIX RAILROAD FOR THE PORTAGE COMPANY—PLEDGES HIS PROPERTY TO CARRY OUT HIS CONTRACT—THE OMAHA AND ST. PAUL RAILROAD COMPANIES COVET THE RICH TIMBER LANDS GRANTED TO THE PORTAGE COMPANY BY THE GOVERNMENT—SENATOR SPOONER'S VICIOUS ADVICE TO THE OMAHA COMPANY—THE ST. PAUL RAILROAD SUES THE OMAHA COMPANY FOR ITS SHARE OF THE ST. CROIX LANDS—ACTION OF THE WISCONSIN LEGISLATURE IN THE MATTER—ANGLE'S WIDOW SUES THE PORTAGE COMPANY BEFORE JUDGE GRESHAM—WINS THE SUIT WHICH IS RETRIED BY JUSTICE HARLAN—HIS DECISION.

I CAME to know Mrs. Angle after she had secured a judgment in an action at law before a jury and Walter Q. Gresham as the trial judge, in the United States Circuit Court for the Western District of Wisconsin, and while she was seeking to enforce that judgment or redress on the equity side of that court, in the Supreme Court of the United States and the United States Court of Appeals for the Seventh Circuit. I saw her in Washington when General Charles Ewing, General Sherman's brother-in-law, came to argue her case. I saw her in Chicago after the court of equity—the guardian of the infant, the orphan, and the widow—had turned her out penniless, and confirmed as a gift, in consideration of the construction of a railroad, timber lands worth \$2,000,000 to a railroad corporation. Towards the construction of this railroad a jury found her husband, H. C. Angle, had contributed \$341,000. Justice

<sup>1</sup>See page 811.

Harlan reduced this amount to \$200,000. Small and delicate, she possessed the courage and fortitude of the tigress, and although broken in health at the end, claimed she had proved Sledon's saying, "Equity is a roguish thing."

In impoverishing herself, Sarah R. Angle laid bare a condition of affairs that helped, together with other disclosures, to bring about reforms in the executive, legislative, and judicial branches of the government. Tried under the shadow of the Wisconsin University and the dome of the State Capitol, the case had the widest publicity. For a time the public mind was assuaged by the report that was deftly circulated, that after the courts of equity had turned the widow from their door, the corporations had granted her a competency for life. Of course this report was untrue.

The gibes and sarcasm of the English poets and philosophers helped develop the chancellor's conscience. "In law we have a measure, but in equity it is like the chancellor's foot. It is long or short, according to the man, and then it is not always the same in the same man."

Stripped of legal verbiage and technical descriptions of lands, the following is the case: By Acts of Congress of June 4, 1856, and May 5, 1864, 400,000 acres of timber land were granted to the State of Wisconsin to aid in the construction of a railroad running northwest from St. Croix River or Lake to Lake Superior, about sixty-five miles in length, with the proviso, however, that if the railroad was not completed within a period of ten years, the land should revert to the United States. At that time it was not the policy of the executive branch of the government of the United States to insist on forfeitures of land grants made to aid in the construction of railroads, if the construction was not completed within the time limit. Until the executive branch of the government acted, the Supreme Court had held that the limitations in the land grants Congress made to the States to aid in the construction of

railroads were not self-acting. So long as the executive department did not say, "Your time has expired," the license to the State "and its grantee" to build the railroad and earn the land grant continued.

By an act of the Wisconsin legislature of March 20, 1865, and by subsequent acts, the State of Wisconsin conveyed these lands to the Chicago, Portage & Superior Railroad Company, hereinafter called the Portage Company, and gave it until May 2, 1882, to complete the St. Croix Railroad. The Portage Company contemplated a line to Chicago, and to that end gave a mortgage to the Farmers Loan & Trust Company to secure an issue of \$1,000,000, with the proceeds of which it expected to construct the Portage and Chicago line. Only a small portion of these bonds had been issued when the panic of 1873 stopped their sale and suspended practically all railroad construction.

The revival of business came in 1879 and 1880, and on August 1, 1881, the Portage Company entered into a written contract with H. C. Angle to construct the sixty-five miles of railroad of the St. Croix line. The lowest value that was ever placed on the timber on the 400,000 acres granted for the construction of this line was \$2,000,000. Angle had had large experience as a railroad contractor and was a man of means.

At this time, and for several years prior thereto, the Chicago, Minneapolis, St. Paul & Omaha Railroad Company, hereinafter called the Omaha Company, was a railroad corporation operating more than a thousand miles of railroad in the States of Wisconsin, Minnesota, and Nebraska. It had been favored in the construction of its line by grants of government lands. Henry H. Porter of Chicago was its president; Philetus Sawyer of Oshkosh, Wisconsin, one of the United States senators from the State of Wisconsin, our old neighbor and friend in Washington, was a member of its Board of Directors and its vice-president; John C. Spooner, its general counsel, resided in the St.

Croix neighborhood, at Hudson, Wisconsin. The state of public morals in Wisconsin was such at that time that Mr. Spooner could be at the same time a lobbyist and a successful candidate for the United States Senate, to which he was elected January 15, 1885. Later a change came over the public, if not over the judicial conscience, and with it came Mr. Spooner's retirement from the United States Senate. One of the contributing causes to both results was Mr. Spooner's connection with this celebrated Angle case.

The Chicago, Milwaukee & St. Paul Railroad Company, hereinafter called the St. Paul Company, was another Wisconsin railroad corporation owning a great railroad originating at Milwaukee, extending to Chicago, and from Milwaukee through the Northwestern States adjacent to Wisconsin—now running to the Pacific Coast. Alexander Mitchell, its president, and John W. Cary, its general counsel, resided at Milwaukee.

Both the Omaha and St. Paul companies had long looked with covetous eyes upon those 400,000 acres of valuable timber lands and the line to Duluth and Superior via St. Croix, and many were the attempts prior to 1881 to wrest them from the Portage Company. When the Omaha attorneys in the Wisconsin legislature—in those days it was the practice for the corporations to have attorneys on their payrolls in all the legislatures, even in the national Congress—would introduce a bill to revoke the grant to the Portage Company and confer it on the Omaha Company, the attorneys for the St. Paul Company in the legislature would object and the bill would not pass. When the St. Paul Company's attorneys attempted to pass a like measure, the Omaha's attorneys would block them.

After Angle entered into his contract of August 1, 1881, with the Portage Company, he vigorously prosecuted the work of constructing the sixty-five miles of railroad. He made great progress during the fall of that year. But in order to do so, he was forced to pledge his individual

property and credit. That 400,000 acres of valuable timber land, the title to which would vest absolutely in the Portage Company on the completion of the line, seemed to justify this action on Angle's part. That the Omaha might buy off the St. Paul Company and part of the officers of the Portage Company, tie the hands of the balance with an injunction, and then secure the approval of all the judges except one who came in contact with the case, was not considered within the range of possibilities.

John C. Spooner later testified that in the very last days of December, 1881, or the first days of January, 1882, he met Angle at the Grand Pacific Hotel in Chicago. From Angle, Spooner learned that the Portage Company was financially embarrassed, that it was not meeting its payments to Angle, who was advancing his own money to carry on the construction, and was making desperate efforts, although hard pressed, in the dead of winter, to comply with his contract with the Portage Company. All these facts Mr. Spooner said he forthwith laid before President H. H. Porter of the Omaha Company, with the following advice: That the Portage Company had forfeited the grant of the land on the St. Croix-Superior line because it had not constructed another line, namely, that between Portage and Chicago, and that the way for the Omaha or Porter's Company to get the land grant would be to have the legislature, when it met on January 11, 1882, revoke the grant to the Portage Company and confer it upon the Omaha Company, although under the existing acts of the Wisconsin legislature, as we have seen, that grant did not expire until May 2, 1882.

In the equity suit, President Porter of the Omaha Company testified that he accepted Mr. Spooner's advice as sound and proceeded to act on it. But eminently practical and fearing another contest with the St. Paul Company before the Wisconsin legislature, Mr. Porter said he first went to Milwaukee and there, on the 10th of January,



1882, entered into a written contract with Alexander Mitchell, as president and on behalf of the St. Paul Company, stipulating that if it, the St. Paul Company, not only would abstain from opposing the Wisconsin legislature from revoking the grant to the Portage Company and conferring it upon the Omaha Company, but on the contrary, by its officers, agents, and attorneys, would aid the Omaha Company in securing the revocation and confirmation of the grant to the Omaha Company, that the Omaha Company would give the St. Paul Company one-fourth of the land grant and a trackage right over the sixty-five miles of railroad when completed, on a fair and equitable basis. Senator Philetus Sawyer and Mr. Mitchell were named in this contract as the arbitrators to determine any controversies that might arise between the two companies as to the distribution, as one man said, of the "swag."

At the same time that Porter opened his negotiations with the St. Paul Company he also went after the Portage Company. At this time Charles J. Barnes of Chicago was and had long been a director of the Portage Company and claimed to represent himself and his uncle, A. S. Barnes of New York. A. A. Jackson of Janesville, Wisconsin, was also a director and since 1872 had been general solicitor of the Portage Company. Before the Wisconsin legislature he had helped secure for the Portage Company the St. Croix grant, and in the season of 1881, with the aid of John C. Spooner and others, he had prevented the St. Paul Company from revoking the grant of the Portage Company, and confirming it in the St. Paul Company. All that the Portage Company owed, except the few bonds secured by the mortgage to the Farmers Loan & Trust Company, the proceeds of which had gone into the construction of the Portage and Chicago line, and the indebtedness it had incurred to Angle on the St. Croix line, was \$18,000 to Jackson, \$2,000 to I. C. Stone, an attorney of Madison who had helped Jackson before the Wisconsin legislature, and

\$10,000 to Edward Ruger of Janesville, Wisconsin, for engineering services. Forty thousand dollars would cover all the two Barnes's had contributed to the enterprise. Eighty thousand dollars, Jackson said, in his testimony, would reimburse himself, the two Barnes's, Stone, and Ruger.

At this time the Portage Company had outstanding \$2,000,000 par value of stock in the name of Charles J. Barnes. One million was to reimburse and secure Barnes, Jackson, Ex-Governor Schofield and others for their advances to the Portage Company. The other million was merely held by Barnes to dispose of to raise money for the company. In short, as to the last million, at least, Barnes was only a trustee.

January 20, 1882, the Omaha Company, represented by H. H. Porter and John C. Spooner, entered into a contract in the name of Ransom R. Cable, one of its directors, with Charles J. Barnes and A. A. Jackson for the purchase of \$2,000,000 of the capital stock of the Portage Company standing in Barnes's name, for the sum of \$200,000, provided the Omaha Company succeeded in wresting the St. Croix land grant from the Portage Company. Should the legislation fail, then Jackson and Barnes bound themselves to sell for a song. Of this \$2,000,000 of Portage stock, H. H. Porter testified that at the time he purchased it through Cable it had no market value and was worthless, except as it could be made a means of annoyance.

In the case of *Oscanyan vs. Arms Howe Company* (103 U. S. 261), decided in 1881, the Supreme Court of the United States said:

Bribes in the shape of high contingent compensation must necessarily lead to the use of improper means and the exercise of unlawful influence.

This *Oscanyan* case rests on the scoring Chief Justice Taney gave one Marshall who was suing the Baltimore & Ohio Railroad Company for compensation for lobbying

through the Virginia legislature a bill to give the Baltimore & Ohio Company, which was a Maryland corporation, the right to build its line through Virginia to the Ohio River. What particularly aroused the ire of the Chief Justice in speaking for the entire court (*Marshall vs. B. & O. R. R. Co.*, 16 Howard 341), was Marshall's advice to the Baltimore Company in a letter which the Company preserved and used in defending the suit: "Give them nothing if they fail, endow them richly if they succeed."

After the revocation of the land grant to the Portage Company and the completion of the railroad by the Omaha Company, the St. Paul Company called on the Omaha Company for its one-fourth of the 400,000 acres of timber land and for its trackage right over the constructed sixty-two miles of railroad. "Oh, no," said the Omaha Company, by John C. Spooner and S. U. Pinney, "you blackmailed us into entering into that contract, which, as a matter of law, is void because it is manifestly corrupt and unlawful in its tendency, irrespective of the question whether anything wrong was intended or accomplished that was either improper or illegal."

To enforce this contract, the St. Paul Company, September 7, 1883, brought its suit in the Circuit Court of Dane County, Wisconsin, sitting at Madison, which held the contract valid. But on appeal, the Supreme Court of Wisconsin (75 Wis. 224), resting its conclusion on Section 4482 of the Wisconsin statutes and the two opinions of the Supreme Court of the United States to which we have just referred, on the 3d day of December, 1899, sustained the contention of the Omaha Company, that the contract was corrupt and immoral, and therefore void.

January 23, 1882, the bill drafted by John C. Spooner revoking the grant to the Portage Company and conferring it on the Omaha Company was simultaneously introduced in both houses of the Wisconsin legislature. Contemporaneous therewith the manager of the Portage Company

"ordered in" the Portage's engineering corps under whose supervision Angle with 1,700 men in the wilds of Wisconsin in midwinter, as John C. Spooner said, was prosecuting the construction of the sixty-five miles of road. Immediately attachments were levied by supply men and boarding-house keepers on Angle's tools and personal property. Laborers clamored for their pay and threatened violence in Duluth, whose citizens telegraphed Governor Rusk to send troops to preserve the peace. Jeremiah H. Rusk, as a member of the Sawyer-Spooner *régime*, inaugurated for the first time Governor of Wisconsin on the 2d day of January, 1882, afterwards said his answer to the citizens of Duluth was: "These men want bread, not bayonets."

The stories of Governor Rusk and Senator Spooner agree as to what then happened. Within a few days after the bill was introduced, and before the bill had passed either house, Governor Rusk called in Senator Spooner and notified him in advance that the bill passing either house he could not sign it unless some provision was made for the payment of the laborers who were then destitute in the wilds of Wisconsin. On the theory there was no obligation on the State to do so, Mr. Spooner said, "I told the Governor I would report to Mr. Porter and take his instructions." Accordingly Mr. Spooner went to Chicago, reported to Mr. Porter, and received Mr. Porter's consent to pay out \$78,000, \$75,000 of it to be applied in part payment of the laborers' and supply claims, and \$3,000 to be used by the State in bearing its expenses in making the distribution. Mr. Spooner says he reported to the Governor what Porter had said to him, and also that he would not assume for the Omaha Company the payment of any other of the obligations of the Portage Company to contractors and subcontractors.

And thereupon on the 16th day of February, 1882, Governor Rusk signed the bill, amended as Mr. Porter desired, limiting the liability of the Omaha Company to

\$78,000 and cutting out Angle. Here it was, the Governor afterwards said, John C. Spooner "put it over" on him, and offered to advance \$50,000 if that should be necessary to help Robert M. LaFollette put Spooner out of the United States Senate. But in those formative days General Rusk thought his old army comrade of the Army of the Tennessee, as the trial judge in the Angle case, did not have the regard for the executive and legislative that should obtain under our separate and independent departments of government.

Governor Rusk's biographer attempts to justify the Governor's course by showing that he forced the Omaha Company to pay the laborers the back wages the Portage Company owed them. Why, then, in law, morals, and *equity*, said Walter Q. Gresham, did not the Governor force the Omaha Company to reimburse Angle, the contractor, the \$341,000 (part of which liquidated pay rolls) that Angle had expended on the partly constructed railroad before the land grant on which that partly constructed railroad was turned over to the Omaha Company and which the Omaha Company completed December 1, 1882?

On the 2d day of February, 1882, Angle brought his suit in the United States Circuit Court for the Western District of Wisconsin at Madison, against the Portage Company for \$750,000 damages sustained by him by reason of the breach of the contract of August 18, 1881, in that it had not made cash payments to him as the work progressed, as the contract provided, and in the event he should fail on that theory, to recover the value of the work he had performed on the sixty-five miles of railroad, and on the 3d day of February, 1882, he brought in the same court his suit in attachment in aid and levied on the 400,000 acres of the land grant timber lands.

And this was the way Ex-Governor Schofield, the president of the Portage Company, who claimed he had an interest in the stock standing in Barnes's name, was rounded up.

February 8, 1882, in the Circuit Court of Cook county,

Illinois, at Chicago, Ransom R. Cable, as plaintiff in a suit that day brought by Charles M. Osborne, an eminent member of the Chicago bar, secured, without notice, an injunction against Schofield, as president, and the Portage Company, from issuing any further stock or bonds or making any transfer of any stock already issued. At this time the Grand Trunk Railroad Company of Canada was considering the purchase of all of the stocks and bonds of the Portage Company. The other officers and directors of the Portage Company were left free to act. In this bill it was set up that Cable was then the sole owner of all the valid stock of the Portage Company then outstanding, but as to how Cable acquired it not a word was said. There was not a reference to that remarkable contract of January 20, 1882. As a matter of fact, Cable did not and never had owned a dollar of Portage stock.

Charles J. Barnes became surety on the injunction bond Cable was required to give under the agreement of the Omaha Company to indemnify him. As soon as there was notice of this injunction, the Grand Trunk Company withdrew from the scheme and the collapse of the Portage Company was complete.

March 7, 1883, the legislature of Wisconsin confirmed the Act of February 16, 1882, in the face of the claim that it was void and unconstitutional because the grant to the Portage Company did not expire until May 1, 1882.

These acts of the Wisconsin legislature Walter Q. Gresham held did not debar Angle's suit, on the law side, and neither, whether corruptly or uncorruptly passed, did he believe they should have that effect on the equity side of the court.

August 6, 1882, H. C. Angle died in Chicago as the result of his financial misfortunes, and Sarah R. Angle, his wife, was appointed administratrix of his estate by the Probate Court of Cook County, Illinois, and was substituted as plaintiff in his suits. The Angles were New York people, but when the construction work on the Portage Railroad

was begun, they had taken up their residence in Chicago.

By December 1, 1882, the Omaha Company having completed the construction of the railroad from St. Croix Lake to Superior on Lake Superior, H. H. Porter sold out his holding of stock in the Omaha Company to the Chicago & Northwestern Railroad Company, the control of which had previously been acquired by the Vanderbilt interests. Porter retired as president of the Omaha Company, but Senator Philetus Sawyer continued as a director and as one of its vice-presidents. Senator Sawyer, as we have seen, sustained Walter Q. Gresham when as Postmaster-General he incurred the wrath of the Louisiana Lottery people, and most cordial were our relations. But the Senator thought the judge was all wrong in so guiding the proceedings in a law suit, as to lay the foundation for an attack on one of the Senator's favorite railroad corporations and on his official integrity.

Angle's attachment suit was heard before Judge Bunn from September 9 to 15, 1884, then taken under advisement and the attachment vacated and discharged April 13, 1885. Judge Bunn thought the Sawyer-Spooner-Vanderbilt combination in Wisconsin would support Judge Gresham for President. Judge Gresham was of a different opinion.

January 14, 1887, the Angle case against the Portage Company for the breach of contract came on for trial at Madison before a jury and Circuit Judge Gresham as the trial judge.

Mrs. Angle was represented by Francis J. Lamb, B. W. Jones of the Madison bar, ex-Senator James R. Doolittle of Chicago, and General Charles Ewing, then of New York, where he had taken up the practice of the law after he had failed as the Democratic candidate for the governorship of Ohio. The Portage Company was represented by Silas U. Pinney and A. L. Sanborn of the Madison bar, and Charles M. Osborne. Mr. Sanborn subsequently became the United States district judge for the Western

District of Wisconsin, and Mr. Pinney a member of the Wisconsin Supreme Court.

Mr. Osborne was sent to Madison by the Omaha Company, expressly charged with the duty of making its defense. He it was who had in February, 1882, tied up the Portage Company in the Circuit Court of Cook County, Illinois, as Messrs. Porter and Spooner, in behalf of the Omaha Company, were getting ready to cause the Wisconsin legislature to wrest the land grant from the Portage Company. Mr. Osborne, in character, learning, and ability the peer of any man at the bar, was one of Walter Q. Gresham's especial friends. There were other things than good fees that Charles M. Osborne valued. In addition to paying Mr. Osborne, the Omaha Company compensated the other attorneys and bore all the expenses of the trial.

In his opening statement to the court and jury, Mr. Osborne claimed the Omaha Company had done nothing it was not in law justified in doing; that it was right for the Omaha Company to buy the stock of the Portage Company under the conditions and circumstances in which it made the purchases, and then "prick the bubble." It is due to him as a lawyer to say that in this he was finally sustained by the Supreme Court of the United States, but not by the trial judge. Mr. Osborne claimed there could be no recovery in any event under the law, even against the Portage Company. The act of the legislature in revoking the grant to the Portage Company and conferring it on the Omaha Company was conclusive. And then, acting on the theory that it was the best way to defend, Mr. Osborne stated, "We will show that Angle was guilty of fraud in inducing the Portage Company to enter into the contract of August 16, 1881, with him, in that he had agreed to give Schofield, the president of the Portage Company, one-half of the profits that would be realized on the construction of the sixty-five miles of road," and in order that the "swag" might be large, "the compensation agreed



to be paid Angle was unreasonably high beyond what was usual for such work." All of Mr. Osborne's contentions except the charge of fraud against Angle were swept aside. Because the trial judge denounced from the bench the right of the Omaha Company to "prick the bubble," Mr. Osborne and his associates flinched and refused to produce the contract of January 20, 1882, and it was not until the trial judge threatened to send S. U. Pinney and A. A. Jackson to jail for contempt of court that this extraordinary perfectly-proper contract was produced in court. With intermissions for Sundays, the trial lasted at Madison until January 30, when the jury returned a verdict for Mrs. Angle, assessing her damages at \$351,965.50 over and above a credit of \$132,205.65. Before leaving Madison there was a judgment on the verdict for its full amount, subject to motion for a new trial, which was promptly made by Mr. Osborne and his associates.

The grounds urged for the new trial were the errors of the trial judge in rejecting all the special defenses above enumerated except that of fraud on Angle's part; errors in admitting and rejecting evidence on this one question, and the instruction to the jury on it. Especially was the use of the word "clear," in connection with the words "preponderance of the evidence," criticized, "because," said Mr. Osborne, "that word made the verdict." This portion of the charge to the jury follows:

If you believe from the evidence that Schofield and Gaylord were interested with Angle in the construction contract, and were entitled to share with him any of the profits which might be derived from it, then the contract was fraudulent and there can be no recovery on it. Schofield and Gaylord, as directors and officers of the company, were bound to use their best endeavors to promote its welfare, and the law would not permit them to deal with themselves, and thus profit at the expense of those whom they represented, which they did if the charge in the answer is correct.

And if an agreement existed whereby Schofield and Gaylord were to be benefited as stated, and yet you find in awarding the contract to Angle, they were not influenced by their interest in it, it is nevertheless fraudulent and void.

It is sufficient to render the contract invalid, that Schofield and Gaylord, or either of them, as stockholders and officers of the company, secured an agreement with the contractor to profit personally at the expense of the company.

You must not forget, however, that the burden is upon the defendant to show, by a *clear* preponderance of the evidence, that the contract was fraudulent. The law indulges in no presumption against the good faith of the officers of the company or against the validity of the contract. On the contrary, the presumption is that the officers acted honestly, and that the contract is free from fraud, and unless upon a fair consideration of all the evidence you think there is a preponderance in support of the charge of fraud, you will sustain the contract. Nothing short of an agreement or understanding that Schofield and Gaylord, or one of them, was to have a share in the profits of the contract, is sufficient to render it invalid. Mere talk of such an agreement or understanding would not render the contract void if the parties really came to no understanding or agreement.

It was to the words, "*clear* preponderance of the evidence," that Mr. Osborne especially objected. The word "*clear*" was more than the law allowed.

The motion for a new trial was deferred from time to time until finally Justice Harlan could come to Chicago and hear it, sitting with the circuit judge. There was an extended argument on June 20, 1887. Justice Harlan delivered an oral opinion, which went into the bill of exceptions. After adverting to the rule of the Supreme Court of the United States, where there was a clear conflict in the testimony on a controverted point, that a case should never be withdrawn from a jury, he said:

I have carefully examined the charge given by the circuit judge upon that and other questions in the case and am of the opinion that the charge contains no error. The only ground

entitled, it seems to me, to consideration, on that branch of the case, is the objection made to the sentence in the charge of the court in which the phrase, "clear preponderance of the testimony" is found. Counsel for the company seize upon the word "clear" in that connection, and argue that the jury were required to find more than the law required them to find in order to come to the conclusion that the contract was fraudulent; but that sentence is to be taken in connection with what follows:

Taking all the sentences together, the jury could not have understood the court to mean more than that which the court had a right to say — that before imputing fraud to any one the evidence must be of such a character as to satisfy the jury, reasonably, that such was the fact. The words, "clear preponderance of testimony," in the connection in which they are used, mean no more than a preponderance of testimony. I do not think, therefore, that error can be laid against that part of the charge of the court. It is hardly necessary to go over other portions of the charge to which exception was taken. I am satisfied that the scales of justice were held very evenly balanced throughout the trial.

It struck me at the time the case was opened that the recovery was rather an extraordinary one, larger than the facts justified, to be attributed in part to the natural feeling that jurors would have at the injustice which it was proposed to do the contractor — I have no doubt largely due to the argument of counsel who closed the case before the jury.

We are of the opinion that, upon any fair view of the evidence, the verdict is in excess of the fair amount by \$146,745. The motion for a new trial I recommend to the circuit judge — I say "recommend" for I did not hear the witnesses, and the order should more properly come, I think, from the judge who tried the case — will be denied, provided the plaintiff shall, within ten days, remit from the verdict \$146,745, and in default of their so doing, the verdict will be set aside and a new trial ordered.

"Such an order will be entered," said Judge Gresham.

Mrs. Angle remitted \$146,745 from the judgment. Mr. Osborne, on behalf of the Portage Company, but in the interest of the Omaha Company — for he was in its

pay — presented a bill of exceptions which showed every step in the case down to over-ruling the motion for the new trial and the remitter, which was signed by the trial judge and filed in the office of the clerk of the United States Circuit Court at Madison. From the order over-ruling the motion for the new trial the Portage Company sued out and lodged with the clerk of the Supreme Court at Washington a writ of error, that is, a complete transcript of all that had occurred in the jury trial and down to the over-ruling of the motion for the new trial. To the Supreme Court the Portage Company said in this writ of error that Judge Gresham and Justice Harlan had erred in entering the judgment for Mrs. Angle. But the Portage Company did not make this writ of error a *supersedeas*; that is, it did not give a bond conditioned, if it dismissed the writ before the Supreme Court passed on it, or if the Supreme Court sustained the judgment, that it would pay the judgment. Such a bond would have stayed an execution on the judgment. The bond the Portage Company gave was conditioned only to pay Mrs. Angle the costs she might be put to in the Supreme Court. It was in the penalty of \$1,000. And after a line was obtained on what would be the view of the judges on the equity side of the court to which they knew Mrs. Angle would have to resort in order to enforce her judgment against the 400,000 acres of land then in the possession of the Omaha Company, the writ of error was dismissed.

“No property found,” being the return on the execution against the Portage Company, Sarah R. Angle filed her bill against the Omaha Company on the equity side of the United States Circuit Court for the Western District of Wisconsin at Madison. In this bill she set up, in proper legal verbiage, the facts we have recited, expressly alleging that the Omaha Company had practiced bribery and corruption on the Wisconsin legislature. In truth and in fact, it was the act of the Omaha Company operating

through the Wisconsin legislature that secured the property, 400,000 acres of land with its \$2,000,000 worth of valuable timber on it and bettered by the partially constructed railroad that Angle had built. Because of its wrongs the Omaha Company held this property as a trustee for the benefit of the creditors of the Portage Company, especially the widow of the contractor, Angle, and therefore was liable to have these lands and the proceeds of such of them as had been sold, subjected to the payment of Mrs. Angle's judgment.

The bill concluded with the old English jurisdictional formula: "In tender consideration whereof, as your oratrix is remediless in the premises by the strict rules of the common law, and is only relievable in a court of equity, where matters of this kind are properly cognizable, your oratrix prays. . . ."

To this bill the Omaha Company promptly demurred, that is, it said Mrs. Angle was not entitled to relief in a court of equity.

Contemporaneously with the filing of Mrs. Angle's bill, the Farmers Loan & Trust Company, trustee under the mortgage heretofore spoken of which the Portage Company had executed several years before, filed against the Portage and Omaha companies its bill on the equity side of the United States Circuit Court for the Western District of Wisconsin, on the same theory and on the same facts that Mrs. Angle set forth in her bill. This bill was even stronger than Mrs. Angle's in charging bribery and corruption on the part of the Omaha Company.

But instead of demurring to the Farmers Loan & Trust Company's bill, the Omaha Company by answer relied on the acts of the Wisconsin legislature, and denied there was any bribery, fraud, undue influence, or deceit practised by it in securing the passage of that legislation. Evidence was taken on both sides. Both cases were heard together by Justice Harlan, while on the circuit at Madison, in June,

1889. Charles M. Osborne was still the chief counsel for the Omaha Company.

On July 10, 1889, Justice Harlan announced his conclusions in an elaborate opinion. He came right up to the dead line. The proof was ample that corruption and improper influences on the part of the Omaha Company caused the legislature of Wisconsin to revoke the grant to the Portage Company and confer it on the Omaha Company, and invalid as was the act of February 16, 1882, it broke the credit of the Portage Company; still the act of confirmation was an act of the legislature, binding on a Federal court, sitting as a court of equity. Therefore he turned out of court the Farmers Loan & Trust Company, on its proofs, and Mrs. Angle on the allegations of her bill.

The Supreme Court reversed Justice Harlan at first in the Angle case and then sustained him. But in finally turning Mrs. Angle out of court, Justice Brewer, as the spokesman of the Supreme Court, made no mention of the testimony of Porter and Spooner, of the decision of the Supreme Court of Wisconsin condemning as immoral the contract of January 20, 1882, and the former decisions of the Supreme Court of the United States on which the Wisconsin court in part rested its conclusion. Still they would go behind the legislative act. But in order to do so they said, and so did Judge Brewer and the Court of Appeals for the Seventh Circuit, that it was necessary to show that money was actually paid to some member of the Wisconsin legislature and that was not shown.

Justice Harlan in a formal written opinion agreed with his brethren in their conclusion but dissented from their method of reaching that conclusion. "Sure," he said, some of that money had reached the members of the Wisconsin legislature, but because it was a legislative act, that act, no matter how corruptly brought about, was binding on the courts. The utter variance between Justice Harlan and his brethren as to the most important fact in the case

not only disgusted some of his brethren, but impeached the conclusions he and his brethren had reached, and justified Walter Q. Gresham in quoting to Justice Harlan the couplet:

Those who have been in court declare,  
An honest lawyer is very rare,  
In some the meanest culprit there  
Sits upon the bench.

This Angle case, although there was no formal break, destroyed some of the cordiality that I have described as existing between the Circuit Justice and the Circuit Judge. Here I am simply recording facts. Some people say judges should have no feelings, and yet the chancery reports are full of expressions and imprecations to which the outraged consciences of the chancellors or equity judges have given voice and acted accordingly.

## CHAPTER XXXV

### THE WABASH CASE

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ITS EFFECT ON INTERSTATE COMMERCE LAW — JAY GOULD'S WRECKING SCHEMES — REMOVAL OF RECEIVERS OF THE WABASH RAILROAD — WABASH DECISION MAKES A GREAT STIR — REBATES, PREFERENCES, AND DISCRIMINATIONS PUT UNDER BAN OF STATUTE LAW.

THE opinion in the Wabash case, read December 6, 1886, was far-reaching in its effect.<sup>1</sup> It helped pass the Interstate Commerce Law of 1887, putting under the ban pools, rebates, and discriminations against localities. It was ratified in the Act of March 2, 1887, limiting the jurisdiction of the United States courts in that it provided that a receiver appointed by a Federal court "should manage and operate such property according to the requirements of the valid laws of the State in which such property should be situated." And also that such a receiver may be sued in the State courts.

Prepared without any thought of attracting attention, and with less care than any opinion Walter Q. Gresham ever wrote, the Wabash opinion was more of an executive than a judicial act and the direct result of what had preceded — mature judicial reflection and action. Cutting to the bone and ringing with conviction, only a few of the reasons are given that made the act necessary, namely: the removal of the receivers, John Humphreys and Thomas E. Tutt, appointed by Circuit Judge David J. Brewer of the Eighth Circuit, because they had been paying rebates; the appointment in their stead of ex-Judge Thomas Cooley to operate that part of the railroad in Illinois, Indiana, and Ohio, and the protection of the minority of certain of the

<sup>1</sup> 129 Fed. Rep. 161.



underlying bondholders against the attempt of Jay Gould and his associates to force them into a reorganization they did not wish to enter because it primarily involved a reduction of the rates of their interest. There was no reason for the non-payment of the interest on the underlying bonds other than to subserve the purposes of Jay Gould as a railroad wrecker.

Even before Walter Q. Gresham encountered Jay Gould's reorganization or wrecking schemes, he had, in the most carefully prepared opinions he ever wrote, aided by thorough and exhaustive arguments, by men among the most eminent of the American bar, reached the conclusion that even a single bondholder should be protected in a court of equity, and that, too, against all the other bondholders and the railroad corporation that issued the bonds. This was on April 6, 1886. The case was that of the Farmers Loan & Trust Company *vs.* The Chicago & Atlantic Railroad Company (27 Fed. Rep. 146). The counsel on one side were Benjamin H. Bristol, H. B. Turner, and Joseph E. MacDonald; on the other, Ashabel Green, Joseph H. Choate,<sup>1</sup> J. J. McCook, Charles I. Atterbury, Charles W. Fairbanks, and Edward Daniels.

June 20, 1886, the Indiana, Bloomington & Western Railroad Company, owning and operating a line of railroad from Peoria to Springfield, Ohio, with leased lines from Springfield to Columbus, and Springfield to Sandusky, Ohio, became insolvent because of the construction the Supreme Court of Ohio put on the lease under which the Columbus and Sandusky line was operated. On behalf of the Indiana, Bloomington & Western Railroad Company, Charles W. Fairbanks, in a bill in which it was the plaintiff, copied after the bill General Wagner Swayne had filed in the Wabash case, applied for a receiver. At Indianapolis on June 6, 1886, the Circuit Judge said: "No, we cannot appoint a receiver for an insolvent corporation at its instance and against its creditors." So a bill was filed by a creditor and the receiver was appointed.

<sup>1</sup>See page 812.

The Wabash receivership was and is unique in that Circuit Judge David J. Brewer had appointed the receivers at the instance of the company itself, and after District Judge Treat at St. Louis had declined to act. Instead of the trustees for the bondholders or the creditors of the company proceeding against the company, it had proceeded against its creditors. At this time, May 28, 1884, Jay Gould was, as he had long been, its dominant force, often its president. Built from Toledo, Ohio, to Quincy and Hannibal on the Mississippi, to take up the traffic of the Wabash and Erie Canal from Toledo, Ohio, to the Indiana and Illinois line and that originating in the heart of Illinois, it possessed from the start immense earning power. Honestly constructed and managed, there was no better railroad property in the United States. Many times had it been wrecked and reorganized by Gould, Sage, and Humphreys, but each time it had emerged from a foreclosure or a receivership with a greater load of indebtedness. In 1869 the line from Decatur to St. Louis had been acquired, and in 1871 the Chicago division was built. In 1880 there was a consolidation with a corporation owning a line from St. Louis to Kansas City and Omaha under the corporate name of the Wabash, St. Louis & Pacific Railway Company, with headquarters at St. Louis.

"To the court at St. Louis," said the receivers, and in this they were sustained by Judge Brewer, "must all parties repair having business with or claims against the Wabash property." The other Federal judges through whose jurisdiction the road ran were simply to enter the decrees of the St. Louis court.

March 11, 1885, District Judge Woods at Indianapolis in a letter to Circuit Judge Gresham at Chicago, said:

At the instance of the receiver of the Wabash, after looking into the records of the court as to what had been done during the strike of 1877, I instructed the United States marshal to inform the strikers at Fort Wayne what action had been taken in

that year, and as I have heard nothing more, I suppose it has had the desired effect.

*Now to the point.* The trouble, as I understand, has arisen from reductions in wages, and I have been thinking what the duty of the court may be in such cases. Should receivers be allowed to make reductions without an order of court, or once made, should the court inquire into the propriety or justness of the act? I do not think that the losses incurred by railroads under pool arrangements or suicidal competition should be made good by cutting wages. Especially ought this not to be done upon the responsibility of the courts.

April 18, 1886, one of the Illinois patrons of the Wabash road residing on the Chicago division, not far from Chicago, came before Judge Gresham at Chicago with a petition which he asked leave to file, in which he said his stock had been killed on the Chicago division not far from Chicago at a point where the road was not fenced, as the Illinois statute required. The prayer of the petition was that the receiver be ordered to pay him the value of the stock killed. The attorneys for the receiver promptly objected to the petition being filed and claimed that the United States Circuit Court for the Northern District of Illinois could make no order in the premises, that only the court at St. Louis could do so. The attorney for the farmer was told he might hold his petition for a few days if he was not in a hurry, otherwise he could go on to St. Louis. The attorney waited.

A short time before this Judge Gresham, on a bill filed by the Illinois Central Railroad Company, had issued an injunction against its switchmen, who were on a strike, and had been injuring its property and interfering with the management of its trains.

May 4, 1886, the attorneys for the receivers rushed into court with a petition, and were in a great hurry to have orders issued to the United States marshal at Chicago to protect the receivers in their possession of the road at Chicago, Springfield and in the vicinity of Danville. According to a newspaper man the following colloquy occurred:

"In view of your position the other day, I may not have jurisdiction to enter the orders you ask. Had n't you better go to the court at St. Louis?" asked the judge.

"But," said the lawyers, "the court at St. Louis cannot appoint marshals and issue orders to them in Illinois."

"And Jay Gould cannot run this court, come in here one day and say we have n't jurisdiction, and the next day demand that we enter his orders. If it becomes necessary to protect the property, we will do so, but in the meantime it may become necessary to remove Tutt and Humphreys and appoint some honest citizen of Illinois in their places."

The records of the court disclose the following telegram addressed May 4, 1886, to Humphreys and Tutt, the receivers, by Judge Gresham:

The Circuit Court of the United States is asked to appoint deputy marshals to protect you as receivers in the possession and management of the Wabash property here and elsewhere in this district. If the emergency calls for such action, one of you should be here. The request comes from Colonel Howe, one of your subordinates.

To this telegram the receivers replied next day by letter:

We are in receipt of your telegram of yesterday, . . . for which we are greatly obliged, and to which we have just replied thus:

"We are obliged for your dispatch of yesterday, received last night. We, the receivers, have never denied your jurisdiction over the property which we hold in trust for all the bonds and stockholders and other parties interested in the Wabash property. Colonel Blodgett, our legal representative, will leave here to-night with a petition to Your Honor asking protection. In the meanwhile, will you please afford such protection as you may deem advisable.

"We are greatly surprised to see in the papers of Thursday that you refused protection to the property in our charge as receivers for all the parties interested in the Wabash Railroad, upon the supposition that we had denied your jurisdiction heretofore, and we are pleased to have the opportunity of saying to Your Honor that no such action was ever taken by the receivers or any one representing them.

"We have always appreciated the protection afforded us by the United States Court, and but for the protection and a firm determination by the judges to uphold and sustain the majesty of law and order, the great trust that we represent would have been partially destroyed, to say the least, by lawless men long ago.

"The Central Trust Company of New York did, we understand, offer the objection that Your Honor had no jurisdiction over the Wabash property, but of this we knew nothing until the past week."

Before this letter was received, on the morning of the 6th, Colonel Blodgett, accompanied by Thomas E. Tutt, walked into the chambers of the Judge of the Circuit Court at Chicago. And the evening of that day, before Mr. Tutt started back to St. Louis, he sent to the Circuit Judge the following letter:

I have this day visited the yards and freight business of the Wabash Railway in Chicago, and find that considerable freight is being received and delivered. I am also informed by Mr. Wade, our superintendent of transportation, and Mr. Talmadge, our general manager, that the condition of affairs has been steadily improving since yesterday morning, and it is their opinion that with deputy sheriffs and police now on duty in the vicinity of the property they will, for the present at least, be able to continue business, and in view of these facts, I think it unnecessary for the court to take any immediate action upon our petition filed in your court yesterday, requesting the appointment of deputy marshals.

Meanwhile, soon after Tutt and Humphreys were appointed receivers, Jay Gould caused foreclosure proceedings to be begun against it at St. Louis under the general or blanket mortgage covering the main line from Toledo to Omaha via St. Louis with all its branches. This mortgage secured an issue of \$50,000,000. It was typical of Gould's system of financing. It was never claimed that much of the proceeds of that issue of bonds went into the improvement and betterment of the Wabash Railroad. This mortgage had gone to a decree of foreclosure before

Judge Brewer at St. Louis. At a sale under it, April 26, 1886, the Jay Gould, Sidney Dillon, Russell Sage, and Solon Humphreys syndicate purchased the entire railroad of the Wabash Company, with all its branches both east and west of the river, and proceeded to whip into their reorganization—which involved a reduction of interest from 7 to 5 per cent—certain of the bondholders on the Chicago division, 250 miles long, under the mortgage of February 1, 1867, covering the main line in Ohio, Indiana, and Illinois from Toledo to Quincy, and a mortgage dated May 17, 1879. Between these last two and the mortgage (\$50,000,000) that Gould was foreclosing in Judge Brewer's court were ten other separate mortgages each securing a separate series of bonds.

These thirteen mortgages secured an aggregate of \$27,000,000 of bonds. Above them, or subordinate to them as liens, was Gould's \$50,000,000 mortgage. All of this \$27,000,000 had been whipped into the fold but about \$4,000,000 which was held by one Bears and his associates, \$1,800,000 on the Chicago Division, and the rest, \$2,200,000, on the main line, held by one Atkins and his associates. Bears and Atkins were threatened with all kinds of litigation, and orders were entered at St. Louis by Judge Brewer September 6 and 7, 1886, that left it to the discretion of the receivers, Tutt and Humphreys, as to what underlying bondholders should receive interest on their bonds, pending the reorganization. Under these orders the Bears and Atkins bondholders were denied interest. Orders had also been entered by Judge Brewer's court that put claims for labor and supplies incurred by the Missouri Pacific Company while it operated the Wabash Road for thirteen months immediately preceding the receiverships, a charge upon the Wabash Railroad, as a lien superior to the liens of the Wabash mortgages.

Bears and Atkins, by able counsel, Henry Crawford and D. H. Chamberlin of South Carolina fame, had watched

the proceedings in the Chicago & Atlantic and the Indiana, Bloomington & Western, and the proceedings in the Wabash case. These precedents made them bold to act.

Bears, on behalf of himself and his associate bondholders, filed in the Northern District of Illinois a bill to foreclose the mortgage on the Chicago Division, while Atkins, by another bill in the Southern District of Illinois, took similar action under the two mortgages mentioned on the main line. In addition to asking for the foreclosure of the mortgages, they moved the court to remove Humphreys and Tutt on the ground that they were not fit persons to act as receivers, and to appoint some capable, trustworthy person in their stead.

Much testimony was taken in support of the motion to remove Tutt and Humphreys. They were put on the witness stand and made to admit they were without the qualifications necessary to manage a railroad. General Swayne also became a witness to explain how some of the orders at St. Louis were procured. Those who heard it, said, at the final hearing on the motion to remove the receivers, that Henry Crawford's argument was one of the best ever heard in a courtroom.

The decision said it was unusual and novel, at the instance of an insolvent railroad corporation, without notice to appoint as a receiver against its creditors, one of its stockholders who had been unsuccessful in its management. It denied that the court at St. Louis had paramount jurisdiction over the property in Illinois, asserted that it was the duty of a court of equity to protect the rights of minority bondholders, and in commenting on the assertion of the attorneys that it was right for the reorganization committee to discriminate against the non-assenting bondholders in paying interest, the following language was used:

The boldness of this scheme to aid the purchasers by denying equal rights to all bondholders secured by the same mortgage, is equaled only by its injustice. The right is asserted by the

purchasers of the property, in a court of equity, to take the earnings of a road covered by a mortgage and pay part of the coupons secured by that mortgage, to the exclusion of coupons secured by the same mortgages and falling due at the same time. Doubtless the counsel who obtained the orders of September 21 was not as frank in avowing to the court at St. Louis the purposes of the purchasers as he was here, and still is in defending his interpretation of them.

Criticism was made of the orders of the court at St. Louis in directing that the earnings of the Wabash Company be applied to the payment of the indebtedness incurred by the Missouri Pacific Company while operating the Wabash Railroad, and in issuing receivers' certificates to pay that indebtedness.

Gould, Sage, Dillon, and Humphreys were indorsers of \$2,000,000 of the promissory notes of the Wabash Company at the time the receivers were appointed. Two days later the court at St. Louis authorized the issuing of receivers' certificates to pay that indebtedness. That was one of the objects in view when Gould, Humphreys, Dillon, and Sage, as a majority of the meeting of the Executive Committee of the Wabash Company, decided on the 21st of May, 1884, that they would put the Wabash Railroad Company into the hands of a receiver. Receivers were authorized to pay rebates which the Missouri Pacific Company had agreed to pay prior to the appointment of the receiver. They paid such rebate claims to the extent of \$360,000 and \$3,200,000 on account of labor and supply claims incurred by the Missouri Pacific Company while in the possession of the Wabash property. It also was shown that Gould, Humphreys, Dillon, Sage, Hopkins, and Charles Ridgeley were all directors of the Ellsworth Coal Company, owning a mine near the Wabash Railroad in Sangamon County, Illinois; that they paid rebates on coal shipped prior to the receivership, and that on coal shipped since the appointment of the receiver and up to September 1, 1886, they had paid rebates



amounting to \$63,305.85, equal to the entire capital of the coal company, and besides, the receivers were hauling coal for this company to Chicago at less than current rates; that receiver Humphreys himself had said in a statement filed with the court that the rates were so low that they had caused the receivership. The opinion proceeds:

Men with a proper appreciation of their rights and the rights of others—trustworthy men—are not apt to be found in such inconsistent relation. Gould, Humphreys, Dillon, Sage, Hopkins, and Ridgeley are men of stern integrity if their interests in the coal company would not improperly influence their action as directors of the Wabash Company. It is going very far—farther than this court is willing to go—to enforce a secret contract for the rebate of freight paid to a railroad company, and to the extent of his interest in the coal company, Humphreys allowed a rebate to himself.

So Humphreys and Tutt were removed and Thomas Cooley was appointed receiver of the Wabash lines in Illinois. He managed the property so successfully that Mr. Cleveland made him chairman of the Interstate Commerce Commission when it was organized.

General John McNulta succeeded Judge Cooley as receiver of the Wabash. Much rehabilitation work was done, which Jay Gould himself approved; although when the language of the court, and other expressions, went broadcast over the country at the time the decision was made public, Gould was bitter in his denunciation of the judge—said he was a candidate for the Presidency.

Judge John Schofield, of the Illinois Supreme Court, summed up Gresham as follows: "I look upon Gresham as combining in himself two great qualities—qualities rarely found together—he possesses executive ability and a judicial mind, and to an unusual degree. Many of our great men have possessed one or the other of these qualities, but few have possessed both. In Andrew Jackson we had a sample of the men who have great executive ability but

small reasoning faculties. Daniel Webster was one of the other class."

The opinion was given the widest publicity. Of it the editor of the *American Law Review*, S. D. Thompson, the author of that standard work, "Thompson on Corporations," wrote January 14, 1887, "We will do what we never have done before with any decision, print it in full." From his law office in New York Robert G. Ingersoll wrote, "You never did a better thing than the action you took in the Wabash case. . . Confidence in the judiciary of the country will go far towards doing away with the spirit of riot and disorder. If the people really feel that the bench will stand by the right, there is no danger; when it is known that no man can be rich enough or popular enough to *pervert judgment* the people will be satisfied." Judge Dyer wrote: "Your decision in the Wabash case is making a great stir. You are being abused by the pirates and commended by all good people. I am glad I belong in the Seventh Circuit which once had Judge Drummond."

Although ratified within three months by the passage of the Interstate Commerce Act, putting rebates, preferences, and discriminations under the ban of the statute law, and by the two subsequent acts of Congress, Judge Gresham's opinion in the Wabash case was the cause of the rebuke the Supreme Court administered in 1890 in the appeals that went to the Supreme Court in the Narrow Gauge case.<sup>1</sup>

<sup>1</sup> See page 510.

## CHAPTER XXXVI

### EVENTS PRIOR TO 1888 CONVENTION

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BLAINE AGAIN CANDIDATE FOR PRESIDENT—REDUCING THE TREASURY SURPLUS—CLEVELAND'S TARIFF MESSAGE—EDITOR JOSEPH MEDILL'S POSITION ON THE TARIFF—BLAINE WITHDRAWS AS CANDIDATE—GRESHAM BOOM—JUDGE GRESHAM REFUSES TO MAKE TERMS WITH PLATT AND QUAY—PLATT'S POWER IN THE CONVENTION.

AFTER James G. Blaine's defeat as the Republican candidate for President in 1884 it was thought that he would not again ask for the Presidency. Grover Cleveland had defeated him by a narrow margin, especially in New York, where the Democrats had only 1,100 more votes than the Republicans, with the Greenback, Prohibition, and Labor parties casting an unusually large vote for their respective candidates. But Oregon unexpectedly went Republican in 1886, and again Mr. Blaine was put forward. In Indiana and Connecticut the Republicans prevailed over the Democrat, Prohibitionist, and Labor parties by scant pluralities. Conceding that Mr. Blaine might again lose New York with its large electoral vote, his many friends, who were ardent in their devotion to him, said that with Oregon, Indiana, and Connecticut doubtful States, and with the sure Republican States, he would not again need New York. At this time Mr. Blaine had been abroad for over a year. In the West the *Chicago Tribune* was the leading Republican paper, and it took the lead in again pressing Mr. Blaine on his party and the country.

Meanwhile Walter Q. Gresham's prediction of 1884, that the surplus for the fiscal years 1885-1886 and 1886-1887 would increase, had been verified. Money beyond

the needs of the government was piling up in the Treasury. The talk of the hour was, the best way to reduce this surplus. To the Congress that met December 4, 1887, Grover Cleveland sent his famous message in favor of the reduction of the tariff.

Departing from the custom in an annual message, Mr. Cleveland said he would call the attention of Congress to a single subject, the dangers of the increasing surplus in the Treasury and the means of reducing it, namely, by reducing the duties on imports. Short, the message was read by everybody. The surplus for the three years ending June 30, 1887, after meeting all the requirements of the government, interest on the war debt, and the provisions of the sinking fund, was \$122,833,130.22. For the five months ending December 1, 1887, said President Cleveland, the excess was \$55,258,701.11. Manifestly he had been studying President Arthur and Secretary of the Treasury Folger's recommendations as detailed in a previous chapter.<sup>1</sup>

The surplus had in part been used in retiring the three per cent bonds which were payable at the option of the government. But on the 30th of June, 1887, all of these had been redeemed, and since then and prior to December 1 of that year, \$27,684,283.55 had been expended in the purchase of government bonds not yet due, bearing four and four and one-half per cent interest, the premium paid averaging about twenty-four per cent for the former and four per cent for the latter. The surplus for the fiscal year ending June 30, 1888, Mr. Cleveland estimated at \$113,000,000.

Clear it was, argued Mr. Cleveland, as President Arthur had predicted, that the present revenue would create a surplus that when due in 1891 would liquidate the four and one-half per cent bonds amounting to \$250,000,000, and before the four per cents amounting to \$737,000,000 matured in 1907 the money would be in the Treasury to

<sup>1</sup>See page 498.

redeem them. The danger was shown of the government collecting more revenue than it needed, the iniquity of placing government money in the banks in order to get it back in the hands of the people, and the necessity of entirely divorcing the government from private business. "*But the tax on tobacco and spiritous and malt liquors should be retained.*"

Naturally Mr. Cleveland formulated the phrases, "It is a condition which confronts us, not a theory." That he was no free trader the following will suffice to show:

It is not proposed entirely to relieve the country of this taxation. It must be extensively continued as the source of the government income; and in a readjustment of our tariff the interests of American labor engaged in manufacture should be carefully considered, as well as the preservation of our manufacturers. It may be called protection, or by any other name, but relief from the hardships and dangers of our present tariff laws should be devised, with special precaution against imperiling the existence of our manufacturing interests. But this existence should not mean a condition which, without regard to the public welfare or a national exigency, must always insure the realization of immense profits instead of moderately profitable returns.

To the "infant industries" of one hundred years' growth there were sarcastic allusions. The combinations and the trusts which were formed to prevent the domestic competition which it had been urged would follow a protective tariff, were justly condemned and pointed to as "proof that some one is willing to accept lower prices, and that such prices are remunerative."

Then Mr. Cleveland argued in favor of free raw materials for the manufacturers, and urged taking the tariff off wool. With great force, but without the address and skill of Arthur and Folger, the President demanded a reduction of the customs duties. Said he: "Our present tariff laws, the vicious, inequitable, and illogical source of unnecessary taxation, ought to be at once revised and amended."

When passed these tariff laws were not vicious, inequitable, illogical, and unnecessary. This sentence was used in many quarters to revive the old war spirit. "Exactly the expression of a man who hired a substitute during the war and who went fishing on Decoration Day," said the "Tariff Barons," and promptly the soldier element took up the cry. A deft advocate would not have so denounced the war tariff.

Arthur and Folger had handled the subject in such a way that the tariff barons, the combiners, the trust magnates, and even Mr. Blaine, for a time, assented to their conclusion—reduce the tariff duties.

It has since been claimed by many Democrats that it was the right message but at the wrong time. It should have come earlier, in order to have given time to meet the falsehoods and misrepresentations of the new order of protectionists. The Democratic party at that time was disorganized to a large extent over the distribution of patronage. The message undoubtedly drew the attention of Cleveland's party and the country from the squabbles over the offices and centered the public mind on the then one great question before the country, the revision of the tariff.

The day following the appearance of the message, Mr. Blaine in an interview at London answered Cleveland's arguments for a revision of the tariff. In this interview Mr. Blaine denounced President Cleveland as a free trader and, going beyond the Republican platform of 1884, advocated higher protection than had ever before been advanced in this country. For the first time was it suggested that the tax on whiskey and tobacco be removed so that the manufacturers might have more protection. This interview came by cable and went broadcast over the land. Every newspaper published it on the front page, with headlines to attract attention. It was as universally read as had been the message the day before.

Simultaneously with this famous interview there appeared in the Chicago *Tribune* a leading editorial by Joseph Medill in which he took strong ground in support of Mr. Cleveland's message. The editorial was written and Mr. Medill had gone home before Mr. Blaine's interview was put on the wires.

Joseph Medill was then sixty-seven years of age. He was the last of the great editors who had contributed so much to the development and advancement of the principles of the Republican party. Born in Ohio and educated for the law, he early turned to journalism, moved to Chicago in the early fifties, and became associated with the Chicago *Tribune*. In a knowledge of economics, finance, and the tariff, the principles and history of free government, and in what is called force, he was the peer of any man the nation had produced. Versed in all the ways and acts of the public man, he was a statesman in all save that his first allegiance was due to the great and prosperous newspaper property he had built up. At times this made him timid. He was one of the leaders in the movement to nominate Mr. Lincoln. In 1886 I had heard him tell the same story I had heard from Judge Davis's lips, how in 1860, in order to secure Mr. Lincoln's nomination, they had promised all the cabinet and other executive offices, and how Mr. Lincoln carried out all their agreements, although protesting that they had left nothing for him. But one phase of the story was distinctly Joseph Medill, and as it has never been in print I will tell it here:

After the convention adjourned on the second day before a ballot, while Thurlow Weed was leading a street parade for Seward, we went to the Pennsylvania delegation and made a deal whereby Simon Cameron, Pennsylvania's choice, would be withdrawn after a complimentary ballot, the vote of Pennsylvania cast for Mr. Lincoln, and in the event of Mr. Lincoln's election Simon Cameron would be made Secretary of War. The next day, when the convention met, my anxiety

was great, for Pennsylvania was the trump card in the deck. It became intense after the first ballot when the chairman of the Pennsylvania delegation asked that Pennsylvania might retire for a consultation. By the time Pennsylvania was reached on the second roll call her delegation had returned, and the chairman announced in a beautiful speech that, having sought divine guidance, Mr. Cameron's name was withdrawn and Pennsylvania's vote was cast for Mr. Lincoln. And yet we had bought them the night before.

The sentence, "And yet we had bought them the night before," made a profound impression on my husband. How much it had to do with his subsequent career the following pages will disclose.

Mrs. Medill was a charming, accomplished woman, and one of the ablest I ever knew. A few days after the joint appearance of Mr. Blaine's interview on the President's message and Mr. Medill's editorial, Mrs. Medill told me that when they read Mr. Blaine's interview in the *Tribune* together with Mr. Medill's editorial, "Mr. Medill became very much concerned as to what would be the effect on the circulation and the popularity of the *Tribune*, but after thinking it over he determined to stand by his guns. "And great was and is our surprise and gratification to find," she added, "that the stand that Mr. Medill had taken is popular. The ground swell from the country and the country press are with us." Walker Blaine and Emmons Blaine, both of whom were then living in Chicago, and were representatives and emissaries for their father in the Blaine movement, she said, "were very much concerned at Mr. Medill's attitude, and had endeavored to induce him to modify his position on the tariff, but they were unable to do so."

The Chicago *Tribune* had been the only newspaper in Chicago that had been supporting Blaine. The out-and-out Blaine boomers at once became very bitter toward Joseph Medill, and denounced him as a free trader of



the Grover Cleveland school. He retorted in kind. "The mill bosses," "the trust leaders," the railroad wreckers, and the Jay Goulds were scored, while much was said in leading editorials about the messages of President Arthur, Secretary Folger, the Republican platform of 1884, and the protectionism of Henry Clay, which was not that of war taxes in time of peace. This state of affairs could not continue indefinitely.

On February 12, 1888, B. F. Jones of Pittsburgh and of the iron interests, chairman of the Republican National Committee, gave out a letter he had received from Mr. Blaine. This letter was written from Florence, Italy, under date of January 25, 1888, and in it Mr. Blaine stated he would not again be a candidate for the Presidency. The retirement of Mr. Blaine, said the *Tribune*, left only one avowed candidate, the Honorable John Sherman. But the great mass of the Blaine leaders, and the men who were receiving undue benefits from the war tariffs, refused to accept Mr. Blaine's letter as final. Nor did the *Tribune* make a formal renunciation of Mr. Blaine.

In a way, some time before this time, Mr. Gresham had developed what is called a "potential Presidential boom." Most of the old Arthur followers had turned to him. Church Howe, one of the Arthur delegates from Nebraska in 1884, made public the statement that Arthur had told him in 1884 that if he, Arthur, could not get the nomination, he wanted Gresham to have it.

Mr. Blaine's withdrawal brought forth a number of candidates. General Harrison was one of these. He had been a Blaine man, and so long as Mr. Blaine was in the attitude of a candidate, General Harrison would not antagonize him. Senator John Sherman of Ohio said he had been waiting for Blaine's letter of declination which he knew would come, and at once he was an active candidate. Senator Allison of Iowa, William Walter Phelps of New Jersey, Governor Russell A. Alger of Michigan and

of the Diamond Match Company, and Chauncey M. Depew of New York, the president of the New York Central Railroad, were put forward, the last two as business men's candidates. The old Grant guard had forgiven Walter Q. Gresham his support of Bristow and were almost kindly disposed, while the independents and the independent press were too cordial in his praise to suit many of the Blaine men and the "machine" leaders. It was the independent press and the independents, the "Mugwumps," who had defeated Mr. Blaine.

Many favorable notices of Judge Gresham had appeared in the Chicago *Tribune* before President Cleveland's message. Suddenly, February 22, 1888, it changed from Blaine to Gresham. The movement took like wildfire, if the press notices are any criterion. The Chicago *Inter Ocean*, the old Grant paper, joined in. To an objection of one of the *Tribune's* oldest Blaine readers that it was going to the support of a man who had not only supported General Grant for a third term, but who also had the indorsement of the *Inter Ocean*, the *Tribune* said its opposition to a third term did not extend to proscribing those who had favored General Grant for a third term, and as to the *Inter Ocean*, it could fight it on some other issue than Gresham.

Anticipating Mr. Blaine's withdrawal, General Harrison's friends, who controlled the machine in Indiana, went actively to work to secure the delegates from that State to the convention which the Republican National Committee had, late in December, called to meet in Chicago June 18, 1888. James N. Huston of Connersville was reelected chairman of the Indiana State Central Committee and one of the delegates-at-large from the State to the National convention; Colonel Richard W. Thompson, then almost in his dotage, Clement Studebaker, the manufacturer, of South Bend, and one of the Grant 306 of 1880, and ex-Governor Albert G. Porter of Indiana, made up the other three delegates-at-large from Indiana.

Governor Porter was then in the full vigor of life. He was opposed to General Harrison's nomination, although they had been law partners years before. Porter was a "dark horse," for Porter first, Gresham second, and almost anybody rather than Harrison. The Harrison leaders knew this and wished to prevent Governor Porter from going as a delegate to the convention "to pose as a Garfield candidate," but they could not do so. All that could be done was to instruct him to vote for General Harrison's nomination with other delegates-at-large and the delegates elected in all the districts except one. Some of Porter's friends posed as Gresham men; others as Harrison men. Those who were in the inner circle secretly took to Chicago a carload of Porter lithographs ready to placard the town in the event that Porter should be nominated.

Many of the district delegates were Gresham men, and all except two or three, possibly only one, Elijah W. Halford, editor of the Indianapolis *Journal*, were willing to vote for Gresham. Mr. Halford and John C. New, the owner of the Indianapolis *Journal*, and the member of the Republican National Committee from Indiana, were personally and bitterly opposed to Judge Gresham. Before the delegates were elected, Mr. New in public interviews said Gresham was a free trader, that he had voted for Tilden in 1876, and had refused to vote for Blaine in 1884. James Gordon Bennett by telegram tendered the columns of the New York *Herald* in answer to Mr. New. Mr. Gresham promptly assured Mr. Bennett that while he would make no public statement, he was not a candidate and would not be in the sense the term is used, but the courteous offer required an answer and he would say, Mr. New's statements were untrue. Then the Chicago *Tribune* stated on its first page that Mr. New's hostility to Mr. Gresham dated from the time Judge Gresham instructed the Federal grand jury, regardless of orders from Washington to desist, to investigate the failure of the First National Bank of

Indianapolis, of which Mr. New had been president. The instructions to that grand jury have already been discussed.

The *Chicago Tribune's* attacks, supplemented by the work of Charles W. Fairbanks, who had taken charge of the Gresham boom in Indiana, for a time silenced New's and Halford's mendacious statements. Their bitterness was increased by the fight that three young lawyers, Joseph B. Kealing, Martin M. Hugg, and A. W. Wishard made against Mr. Halford's election as a delegate to the National convention from the Indianapolis District. Some time before, the *Journal* had locked out its union printers. The young lawyers said it would never do to elect the editor of "a rat shop" to represent the party of human freedom in a National convention. Mr. Halford barely squeezed through after an awful rumpus had been stirred up which was not finally settled, and then only partially, until late in the campaign when General Harrison, as the candidate of his party, and the Republican National Committee forced Mr. New to "unionize" his shop.

John W. Foster, in December, 1884, had resigned his place as Minister to Spain and resumed his position as counsel for the Mexican Legation in Washington. Other business came to him of this kind, such as counsel for the Chinese Legation and for the life insurance companies in their international relations, so he remained in Washington but retained his residence at Evansville, Indiana. He wrote Gresham editorials for the Evansville *Journal* and helped Charles W. Fairbanks manage the Gresham boom. Adept in the arts and ways of the diplomat, deprecating the strife and contention between Gresham and Harrison, he caused an account of General Harrison's opposition to the exclusion of the Chinese from this country to be published in the New York *Herald*. It was copied all over the country and seemed, some of the practical men said, to remove General Harrison from the list, for one of the strongest planks in Mr. Blaine's platform was his

opposition to Chinese immigration. Whence came this bomb the Harrison people never knew.

Mr. Fairbanks stayed until the last roll call, but Mr. Foster, being a diplomat, before the convention met asked for his release and got it.

Stephen B. Elkins of the Confederate "Bushwhackers" of Missouri, then of New Mexico and of New York and not long before of West Virginia, one of the original Blaine men, after the exposure of General Harrison's pro-Chinese record renewed his insistence that Blaine should be nominated. "But if it is not Blaine, it will be the field against Gresham," Mr. Elkins said.

Since Gresham was the antithesis of Blaine on the method of reducing the surplus and almost all other details of the administration of public affairs, there was nothing else for his supporters to do but to antagonize the Blaine propaganda.

Certain it is that had Judge Gresham been nominated and elected President in 1888, he was not under even an implied promise to make Mr. Blaine what the latter said was the real ambition of his life—Secretary of State.

May 16, 1888, Colonel R. G. Ingersoll wrote Judge Gresham from his residence in New York:

I was in Washington yesterday. I had a long conversation with Boutelle [a member of Congress from Maine], Blaine's right-hand man, and I told him that Blaine could not be elected; that his friends would be cool and his enemies hot, and if he was nominated, after his letter, he would be the worst beaten candidate that ever ran. I am satisfied that he thinks so too. The friends of Blaine are going to make all they can out of the corpse. Blaine will do the best he can with the winner. You know him perfectly and remember what he wanted to do with you when you were in Arthur's cabinet. I want you to win now.<sup>1</sup>

When Colonel Ingersoll got to Chicago and the situation was laid before him, he supported Judge Gresham in the latter's determination not to make that or any other pledge.

<sup>1</sup>See page 495.

Mr. Gresham told the Colonel that he could have the nomination if he would agree to make Platt Secretary of the Treasury, but he did not want to do so. "Bob" said, "Don't do it. I will go down with you."

It was assumed as to all the other gentlemen who were voted for in the '88 Convention, avowed as to some, that in the event of election Mr. Blaine would be Secretary of State. Soon after he became a member of General Harrison's cabinet in 1891, Mr. Elkins admitted that after the split between "Old Joe" Medill and Mr. Blaine on the tariff, at a conference of Blaine men in December, 1887, in New York, one of them produced a letter from General Harrison in which he said if he were nominated and elected President he would make Mr. Blaine Secretary of State. This letter, Whitelaw Reid and Mr. Elkins, through Gail Hamilton, Mrs. Blaine's sister, sent to Mrs. Blaine. We make this statement not by way of criticism of General Harrison. For twelve years he had supported Mr. Blaine for the Presidency; why, then, should he hesitate to say he would make Blaine Secretary of State in the event that he, General Harrison, should become President?

The "Mugwump" or independent opposition to Mr. Blaine is best illustrated by what John H. Holliday, the "Mugwump" or independent editor of the *Indianapolis News*, said in his paper on March 5, 1889, on the cabinet as sent to the Senate the day before:

Had it been a plain and understood fact any time before the election that Mr. Blaine would be the Secretary of State, General Harrison would have failed to carry Indiana and New York and would have been defeated. In surrendering to him General Harrison has surrendered to the party's worst elements, and done that which there was the strongest pre-election faith among other elements he would not do.

And when it came to pledges, there was one man more powerful than James G. Blaine in the 1888 Convention—ex-Senator Thomas C. Platt of New York.

So hard did the *Chicago Tribune* continue to controvert the proposition for free whiskey and tobacco, which Chauncey Depew had defended at the February 22d celebration before the Chicago Union League Club, and so hard did it press the Blaine people, "the trusts "and "mill bosses," that some of the latter made overtures to Judge Gresham to disavow Joseph Medill and the *Tribune*. His reply was that he would never stand for a higher tariff than that of 1884, would never depart from his sub-treasury speech of 1884, and that he would make no such request of Mr. Medill. To Mr. Medill he said, "Throw the shot into them."

Here we may be permitted to anticipate and to remark that a man who could drive the leader of his party from the lists should not have hesitated "to walk out when the trusts and mill bosses" seized his pen and in convention assembled wrote his platform, especially as his new candidate would lead the bolt.

Frank Hatton—as he was universally called—who succeeded my husband as Postmaster-General, soon after the close of the Arthur administration came to Chicago as editor of the *Evening Mail*. Mr. Hatton had been the first assistant postmaster-general while my husband was at the head of the department. Never a fair critic of Mr. Blaine, and one of the original Grant men, Frank Hatton was very bright, and aggressive as a terrier. His autobiography was typical of the man. "He had graduated from a printer's devil in a small town in Ohio into the army when a mere boy, came back with a commission, started to edit the weekly paper at Mount Pleasant, Iowa, married Sally Snyder, and then with "Bob" Burdett made the *Burlington-Hawkeye* famous." Mrs. Hatton was a most agreeable woman. She, her husband, and their young son, Dick, were our neighbors and friends on the North Side in Chicago, in 1885-1886-1887. Of course the *Mail* was a bright paper. It ran the Wabash decision in full, and in its editorials made great sport of Jay Gould and of his friend

Judge Gresham. After a time Mr. Hatton sold out his interest in the *Mail* and moved to New York. In the Spring of 1888 he turned up at Chicago as the forerunner and manager of the movement to nominate John Sherman. This in no wise interfered with our cordial relations. On the contrary, it brought us much information of the movement behind the scenes. In the practical politics of a National convention Frank Hatton was an adept. Mr. Hatton said:

There are more men, more newspapers, and more newspaper men in the United States for Gresham than ever were for Blaine, but with Old Joe Medill hammering away at Blaine and the new tariff propaganda, the "dyed in the wool" Blaine men will never permit Gresham to be nominated, so John Sherman must be the man.

Most of the Southern delegates were captured by Senator John Sherman. The expenses of electing them and of their transportation were borne by Mr. Sherman. But no sooner had they reached Chicago than General Alger's agents were after them, and before the preliminary organization was completed, Frank Hatton said, "Alger has bought up all our niggers."

They were corralled in rooms in the Sherman House and carefully guarded. Even the hall leading to these rooms was rented by the Alger people, and the man stationed at its entrance allowed no one to enter except those "duly authenticated." Possibly had General Alger not entered the lists, Sherman, as he professed to believe, would have been nominated. However this may be, the operations of the essentially business men's candidate in the '88 Convention were a potent factor in the enactment of John Sherman's anti-trust act of 1890.<sup>1</sup>

Erastus Brainerd of the *Daily News* of Philadelphia was one of the newspaper men Mr. Hatton had in mind when he spoke of the great number of newspaper men turning to Gresham. We make mention of Mr. Brainerd because

<sup>1</sup>See page 635.



his principles were high, and his environment peculiar as illustrating the times. Without any personal acquaintance with Walter Q. Gresham, Mr. Brainerd in the columns of his paper had taken up and pushed the Gresham boom with great vigor. He was fortunate in having some Gresham sentiment to start with.

From March 4, 1885, ex-Attorney-General B. H. Brewster had been urging Gresham's availability; also General B. F. Hickenlooper and his brother, F. W. Hickenlooper. Members of Congress, like General Harry Bingham, were favorable. George W. Childs said he was for Gresham, and his paper, the *Leader*, was cordial in its commendation. As elected by districts, some of the delegates from Philadelphia, as interviewed by Mr. Brainerd's paper, declared themselves for Gresham. John Wanamaker stated in a public interview that he had interviewed Gresham, and that Gresham was a good enough Protectionist for him. Again Hamilton Disson, one of the Arthur delegates of 1884, was a delegate.

Mr. Brainerd drew other newspaper men into the movement. He wrote Judge Gresham many personal letters. Not a politician, and with no taste for the "trades" that he found to be a part of the system, he said men who were delegates were coming to him for promises for offices — "I can not even tell them I am personally acquainted with 'my candidate.'" Mr. Gresham replied to this: "Your letter demands a frank answer: I stand by my tariff utterances in my sub-treasury speech in New York in 1884." Then, as to "trades": "As I am not standing before the country as a candidate, I can not make 'an organization or combination, without which a nomination is scarcely to be expected.' I do not expect to be nominated."

In the preliminary stages Joseph Medill, Walter Q. Gresham, and at least John Sherman, knew that the control of the Republican Convention of 1888 would be in the hands of two men, ex-Senator Thomas C. Platt, the

chairman of the New York delegation, and United States Senator Matthew Stanley Quay, chairman of the Pennsylvania delegation and slated for chairman of the Republican National Committee.

April 19, 1888, P. A. B. Widener, of the Widener-Elkins Street Car Syndicate, came to Chicago as an agent of Senator Quay and called on Joseph Medill. Mr. Widener, so Mr. Medill wrote, had said that he, Widener, had but a slight acquaintance with Judge Gresham, not enough to call on him, but that if Judge Gresham expected to get the nomination he ought to have an organization and some one authorized to speak for him; that Senator Quay would control the Pennsylvania delegation, that Quay, although nominally for Senator John Sherman, was not committed to any one; that because of the want of an understanding the Pennsylvanians had fared badly with President Hayes and with Garfield; that they had had an understanding with Mr. Lincoln's friends in 1860 which had been carried out to the mutual advantage of both sides. "Name some one as your *ipse dixit* and send him to Senator Quay," said Mr. Medill. But no "*ipse dixit*" was "authenticated" to go to Senator Quay and make pledges.

In the heat of the contest Joseph Medill was for making pledges and bargains, as was done in 1860. But as Judge Gresham was in Chicago, Mr. Medill readily saw from the reports that came that no second-hand pledge would go, as it had in the case of Lincoln. Repeatedly he said and wrote to Judge Gresham, to quote one of his letters: "When Platt of New York and Quay of Pennsylvania arrive you are then the general to win the battle by capturing those two leaders."

Senator Farwell wrote Judge Gresham from the Senate chamber, June 5 (the convention met June 18): "Platt is here to-day, and I have promised him anything he wants and will confirm it when we get to Chicago." The same day Senator Teller of Colorado wrote from the Senate

chamber, "Platt requests me to say to you he will call on you as soon as he gets to Chicago." Senator Teller offered no pledges to Mr. Platt on this occasion; he thought Platt ought to vote for Gresham without that, because Teller, Platt, and Gresham had belonged to the same wing of the Republican party, and because, as has been shown, Teller, Gresham, and Senator Folger four years before had helped Platt back to power in New York. Senator Teller's letter closed with the statement: "Platt proposes to, and will, demonstrate his power in Chicago."

A different order of man from Charles B. Farwell was Henry M. Teller. According to Senator Farwell's oral and written communications, it was all a matter of bargain and trade. After it seemed that General Harrison's Chinese record had destroyed his availability, and later, after Platt in the convention threw the Harrison people into consternation by threatening to vote no longer for Harrison, Farwell urged: "New knows Harrison is a dead one; make your overtures to him." None were made, and there never was any danger of what the Harrison people feared, a deal between Gresham and Platt.

In the ultimate analysis, because New York was a doubtful State while Pennsylvania was almost surely Republican, Thomas C. Platt was more influential than Senator Quay; besides, he had been a Blaine man since 1884, and after Mr. Blaine's quasi-withdrawal, Platt's relations with the Blaine people were cordial while Quay always was an opponent of Mr. Blaine. After he reached Chicago Mr. Platt let a few know what he wanted — the Secretaryship of the Treasury. With Platt at the head of the Treasury Department and Quay chairman of the Republican National Committee, the success he afterwards had shows there was reason for Senator Quay's belief that he would run the National government, no matter who might be President. "With Senator Plumb for you and every weekly Republican paper in Kansas and five of the Kansas dailies

advocating your nomination," wrote a Republican from Topeka, "still New York is the key to the situation." This unanimity in Kansas in 1888 will help to explain the upheaval in Kansas two years later.

Thomas C. Platt had been one of the original Grant men in 1880. Elected in 1884 a delegate to the Chicago convention of that year by the aid of President Arthur's friends but without pledges, Platt, instead of voting for President Arthur's nomination, voted for Mr. Blaine. Had Mr. Blaine been elected in 1884, T. C. Platt would have been in his cabinet. Richard A. Elmer, one of the assistant postmaster-generals while Judge Gresham was in the Post Office Department, and of the Platt order of "Stalwarts," was a friend and correspondent of Judge Gresham in 1888. While Walter Q. Gresham was still in the Post Office Department Mr. Elmer retired and organized the American Surety Company, the first of its kind. By 1888 it had grown to a prosperous institution. "There are Gresham men in the New York delegation," wrote Mr. Elmer, "but we can't afford to go against his, Platt's, wishes; he controls four-fifths of the delegates. . . . Not only that, Quay and Platt are in harmony and Quay will trail Platt." Qualified by capacity and experience in affairs for the Secretaryship of the Treasury — unless too close to Wall Street, as was subsequently urged against him, — Judge Gresham did not believe that any interest would have controlled Platt if he was made Secretary of the Treasury. But my husband said he would promise no man a place in the cabinet or anywhere else. "If I ever happen to be elected President," he said, "I will be as free as I was the day I stepped on the bench."

In many ways Mr. Platt manifested his friendly interest. Before the Illinois State Convention met he sent word that he had been to Washington, and in the inner circle of the State had learned that Senator Cullom would not allow Gresham to have the solid vote of Illinois on the start.

This information was communicated to Joseph Medill, who said and wrote — the letter is still in existence — “John R. Tanner and Joseph Fifer will see that Senator Cullom gets back into line.” Both Tanner and Fifer when mere boys had graduated from the farm into the army, and at the close of the war had not reached their majority. Fifer was then the Republican candidate for Governor of Illinois. John R. Tanner was afterwards Governor of Illinois. He was a man of decided ability and force, but withal had a power of suggestion that the best trained diplomat of Europe could not excel in delicacy. Senator Cullom did not break the Illinois delegation. Senator Farwell was opposed to instructing the Illinois delegation for Gresham. He wanted a trading delegation. In that event he would have been a principal. But Illinois was instructed for Gresham, and Tanner said Gresham, in time and in turn, should have asked Platt, “What can we do for you?” That my husband earned the criticism of Tanner and others that he was no politician, is here confessed.

Senator Platt also sent word that Chauncey M. Depew could not be nominated, that Mr. Depew knew this, and was also satisfied that he could not be elected if he should be nominated; that New York might not even give Depew a complimentary vote. Then came a proposition from New York that Mr. Depew's election to the Vice-Presidency would not interfere with his corporate connections, and that he would consent to a ticket of Gresham and Depew. To this my husband failed to assent.

On the 29th day of April, Mr. Platt sent word by Colonel John W. Foster that of the men mentioned, Gresham was his personal choice, and to look out for Pennsylvania, “Quay would swing that State.”

A few days before the Convention met, when all kinds of rumors were flying about, and just after the papers had published a report that Mr. Platt had said “Gresham should not be nominated because too many Mugwumps were for

him," Mr. Platt sent a special messenger to my husband to say that the report was untrue, and that he would come to no decision as to whom he would support for the nomination until he reached Chicago.

Meanwhile, Erastus Brainard was hammering away in his Philadelphia *Daily News*. As a Connecticut Yankee he said he was in touch with men in New England and New Jersey. He was something of a practical reformer. He wrote McManus, one of the Philadelphia delegates, and the other machine politicians of Philadelphia, that he would let up on them if they would support Gresham. They agreed to do so. Then through Senator Farwell, Senator Quay, on May 30, sent word that through this source Gresham would not get a single vote from Pennsylvania. On the 9th of June Quay sent word to Joseph Medill that he would be in Chicago Thursday night, the 13th, and desired "a meeting with Judge Gresham either the afternoon or evening of Friday, whichever suits the convenience of the judge."

On the 12th John C. New brought the Harrison boom to Chicago and proceeded to say that under no circumstances should Gresham have a vote from Indiana. Charles W. Fairbanks, the leader of the Gresham movement in Indiana, arrived at the same time.

Associated with Mr. Fairbanks, some of whom accompanied him, were such men as Albert J. Beveridge, A. C. Harris, Noble C. Butler, V. T. Malott, General A. D. Streight, ex-Governor Thomas Hanna, George W. Wilson, T. R. McDonald, H. C. Hanna, Andrew J. Penman, A. L. Kumler, George M. Friedley, H. A. Orth, Moses Fowler, Judge E. P. Hammond, A. W. Wishard, Charles A. Bookwalter, Kenesaw M. Landis, Edward Daniels, and many others. William V. Rooker was one of Joseph Medill's young newspaper men, afterwards a successful lawyer, who wrote some wonderful newspaper stories about Mr. Gresham that had been copied all over the country. Just at this

time the papers stated that Governor Porter was giving General Harrison much anxiety at Indianapolis.

P. A. B. Widener was in Chicago on the 12th, and Quay, as he had sent word, on the morning of the 13th. He called on Judge Gresham at his chambers, but none of the newspaper men mentioned it, although they all knew it. They were all for Gresham, but seemed to think it was policy to fail to mention that visit. They said, "Senator Quay arrived in town yesterday and put in his time visiting friends around town." Joseph Medill was greatly excited about it.

Senator Quay was in unison with Judge Gresham in opposition to Mr. Blaine, did not object to my husband's tariff views, but could not accept his desire to be free when it came to dispensing the loaves and fishes. On that Quay was insistent — that there should be a definite understanding. "That can not be," was the final answer. This did not mar the cordiality of the meeting. As one of President Arthur's friends in Pennsylvania, Walter Q. Gresham had become well acquainted with Quay. Erastus Brainard, the newspaper man to whom the judge said he would make no deal, did not reach Chicago until Sunday morning. Ex-Senator Platt, Mrs. Platt, and Rachel Sherman, one of General Sherman's daughters, reached Chicago late Friday evening and stopped at the Grand Pacific Hotel. In an interview, Mr. Platt declared he did not know "what New York would do in the convention."

Senator Sherman claims in his autobiography that Mr. Platt promised before he left New York to vote for and throw his influence to Sherman. What inducement, if any, Senator Sherman held out to Mr. Platt he does not state. The mere presence of Senator Sherman's niece in Mr. Platt's party was not enough to warrant a man of affairs like Senator Sherman expecting the support of a cold-blooded politician like Thomas C. Platt. Moreover, Platt gave as his reason for being against Senator Sherman that he was an Ohio

man, and that ever since Platt's and Conkling's experience with Garfield, he would not trust the pledge of an Ohio man. He always opposed McKinley.

We were living at the Palmer House. I noticed that my husband did not suggest my calling on Rachel Sherman, and I did not go. It would have involved including Mrs. Platt on my visit. Under other circumstances I would have promptly called on Rachel Sherman and Mrs. Platt, although I had never met the latter. According to all accounts, Mrs. Platt was a very estimable woman.

The next Saturday Mr. Platt called on my husband and said he was still noncommittal on the Presidency. My husband told Mr. Platt that he was as he had always been, opposed to Mr. Blaine on political lines; that he was opposed to taking the tax off tobacco as proposed by Mr. Blaine, and off whiskey as proposed by Mr. Depew; that he favored the reduction of the surplus on the lines the party was committed to in the platform in 1884 and prior thereto, by reducing the customs duties. "I am for the kind of protection set forth in my New York speech in 1884, which you heard. That had been the policy of the branch of the party to which you and I belonged prior to 1884. Blaine indorsed that speech. Now he and Depew would carry up beyond anything Henry Clay ever advocated. The new propaganda is a mistake and is not right. The scale of wages that made up the difference between the wages in this and foreign countries was sufficient. I know your relations to Mr. Blaine. I can make you no such pledges as he has." It was up to the Judge, as John R. Tanner said, to introduce the subject, to make the offer of a place in the cabinet. Mr. Gresham took the most considerate way he knew, of refusing. They did not meet afterwards during the convention. But Quay came a second time, and in this second visit he did not represent himself alone. From other States than New York and Pennsylvania were these pledges demanded.



Men like John S. McLain, of the *Minneapolis Journal*; George Thompson, of the *St. Paul Despatch*; Robert J. Evans and W. J. Freaney, and Henry W. Judson, professor of political economy in the University of Minnesota, who led in the movement that practically instructed Minnesota for Gresham; Colonel N. H. Owings in Washington, and W. T. Hume and the editor of the *Oregonian*, who swung Oregon into line for Gresham; former Judge of the Supreme Court Rhodes of California, and the California newspaper men; Senator Henry M. Teller in Colorado; Senator Plumb of Kansas, and Colonel Walter Evans of Kentucky, never made a suggestion looking to patronage.

Men like Colonel Clark E. Carr of Illinois, who had been in the 1860 convention, said Illinois was more unanimous for Gresham than it had been for Lincoln. The sentiment in Wisconsin, Minnesota, Nebraska, Kansas, Iowa, Missouri, Colorado, California, Oregon, and the West, as well as in New York, Pennsylvania, and New England, if the press and private reports were any criterion, was also favorable. Indiana was not far behind. In Wisconsin, Henry C. Payne, one of the delegates-at-large from that State, wrote Judge Dyer he was for Judge Gresham, and Senator John C. Spooner wrote Judge Bunn before he was elected a delegate that he would also support Judge Gresham. My husband did not agree with these judges. When asked how Senator Sawyer stood towards him, he answered he thought he would be opposed to him, for there was the Angle case. Payne, Spooner, Sawyer, and Governor Rusk made Rusk a candidate only to hold delegates from Gresham. They all knew Rusk was not a possibility.

That Depew with his railroad influences reached into Wisconsin and even other States is true, but that they would not have been potent against T. C. Platt is equally true. In the end Depew would have followed Platt. Such was Senator Sherman's opinion. An analysis of the vote in the conventions of 1888 and of 1892 shows Platt's control.

## CHAPTER XXXVII

### THE REPUBLICAN CONVENTION OF 1888

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CONTEST FOR TEMPORARY CHAIRMAN—MR. THURSTON ELECTED—ESTEE MADE PERMANENT CHAIRMAN—JUDGE GRESHAM DISLIKES PLATFORM ADOPTED—"TIN BUCKET" PARADE FOR GRESHAM—LEONARD SWETT PRESENTS GRESHAM'S NAME TO THE CONVENTION—INGERSOLL'S SPEECH FOR GRESHAM—OTHER NAMES PRESENTED—PLATT "DEMONSTRATES HIS POWER"—QUAY ELECTED CHAIRMAN OF THE NATIONAL COMMITTEE—HARRISON'S STRENGTH—GENERAL HARRISON NOMINATED.

ON Monday, June 17, 1888, at the first formal meeting of the Republican National Committee, there was a contest as to who would be presented for the temporary chairman to the National Convention, to meet at noon the following day. For a time it had been supposed the committee would recommend M. M. Estee of California for the position. Mr. Estee had opposed the Southern Pacific Company in California, then gave it his allegiance, and came to Chicago as an ostensible "anti-monopoly man," as one of his friends put it, but really a Southern Pacific agent. Only a short time before the committee met, John M. Thurston, one of the delegates-at-large from Nebraska, and the general counsel of the Union Pacific Railroad Company, was also put forward for temporary chairman. Much to Mr. Estee's surprise, the committee voted evenly, 20 to 20. Benjamin F. Jones, chairman of the National Committee, decided the controversy by casting his vote for Mr. Thurston.

Subsequent events made it plain there was significance in the protest, on the floor of the Convention, of the chairman of the Kansas delegation, B. F. Osborne, on behalf of his State, against the report of the National Committee

in naming a "railroad attorney" for temporary chairman of the convention.

Mr. Thurston was a forceful and eloquent speaker. In the mutations of politics he became a United States senator from Nebraska, and closed his days as a lobbyist at Washington.

There were speeches from Fred Douglass and John C. Frémont and then an adjournment until noon of Wednesday, to give ample time, as it was reported, for the Committee on Resolutions to get the platform in the desired shape. There was a hesitancy about committing the party to an unprecedented extreme.

When the Convention met on Wednesday, the Committee on Permanent Organization was not ready to report because of the delay in the Committee on Resolutions. Instead of adjourning again, it was decided to make Mr. Estee permanent chairman and receive the report of the Committee on Credentials, which recommended the settlement of the contest between Congressman John S. Wise of Virginia and General William Mahone, an ex-Senator of the same State. This contest had interested everybody. General Mahone had undertaken to keep Mr. Wise out of the Convention by electing all the delegates from the State of Virginia at a convention held at Petersburg, instead of the district delegates by local conventions. Mr. Wise and his colleague were elected at a district convention, in accordance with the call of the National Committee, and were given their seats. He and his associate voted for Gresham on the first three ballots. General Mahone was for John Sherman.

At the session of June 21, the third day after the convention had been organized, the Committee on Resolutions reported. In the report of the Committee on Permanent Organization were the names of the members of the new National Committee. Matthew S. Quay appeared as the member from Pennsylvania. As before intimated, it had

been previously decided or agreed with Platt that Quay should be the chairman of the new committee when it organized, no matter who might be nominated. And the way Quay used his power after he came into the saddle will be part of our story. William McKinley read the platform report of the Committee on Resolutions. Its chief feature was the tariff. That part of it began:

We are unconditionally in favor of the American system of protection. We protest against its destruction proposed by the President and his party.

It denounced the Mills bill, and free wool as proposed in it, the Democratic measure then pending before Congress. "If there still remain a larger revenue than is requisite for the wants of the government, we favor the entire repeal of internal taxes (by repealing the tax on tobacco and on spirits used in the arts) rather than the surrender of any part of our protective system at the joint behest of the whiskey trusts and the agents of foreign manufacturers."

Indeed, as one of the reporters that morning quoted William McKinley, it was a progressive platform. Even Mr. Blaine in his famous interview had not come squarely out for "free whiskey." It was a repudiation of the platform of 1884.

As soon as Walter Q. Gresham read it in his chambers, he wrote a letter to Senator Farwell, asking that his name be withdrawn from the Convention, and then started out to find Joseph Medill. Just outside of the building, he met Mr. Medill, who was on his way to find Judge Gresham. Medill began the conversation. "I suppose you don't like the platform?" "No," was the response, "and I have a letter here to Senator Farwell requesting that my name does not go before the Convention." Then at the earnest request of Mr. Medill, on his representation that it would embarrass him and other friends, and at the request of others, the letter was destroyed. Had Mr. Medill "stood

by his guns" that platform would have been modified, or at least we never would have had the McKinley Tariff Act, and its like, the Dingley Act, which William McKinley, in his last words to the American people on that fatal day he was shot, said should be modified.

Yielding to the importunities of friends and keeping silent on this occasion, laid my husband open to the charge of inconsistency when he did speak out four years later. Frank Hatton was the leader in this charge. He said, "Gresham had been willing to accept a nomination at the hands of the party that adopted the '88 platform." Mr. Hatton knew Judge Gresham never would have accepted that platform, and also that if he had agreed in advance to make Thomas C. Platt Secretary of the Treasury, he could have said what he pleased in his letter of acceptance. This attack of Mr. Hatton's—it was part of his newspaper business, he was then editing the *Washington Post*—did not disturb our friendly relations.

But never did there ever come a word of criticism from either Thomas C. Platt or Matthew S. Quay that there was any deception on Mr. Gresham's part in dealing with them or that he wanted the nomination on the platform that was adopted. And afterwards Mr. Platt showed his kindly feelings for me in many ways.

"If Judge Gresham is nominated," said John R. Cowdry, Union Labor nominee for President, "I will withdraw and he will poll the labor vote of the country." At the same time, M. H. DeYoung, the member of the National Committee from California, was saying: "Allison, Sherman, and Harrison cannot carry the Pacific slope because of their Chinese records."

In the meantime, the representatives of the Central Labor Union of Indianapolis visited the various State headquarters and protested against General Harrison's nomination because they said he was hostile to labor organizations. They extended their objections to John C. New

and to Editor Halford, because the Indianapolis *Journal* under their management was an open, or "rat shop."

Thursday evening there was a great Gresham "Tin Bucket" parade. Actual laboring men from Fort Wayne and LaFayette, from the mills of South Chicago, representatives of "Little Italy," and the immigrants of every other nationality in Chicago, under the leadership of William Lorimer of Chicago, George W. Wilson of Fort Wayne, and Albert W. Wishard and Joseph B. Kealing of Indianapolis, marched the streets, through the hotels and into the political headquarters of the New York, Pennsylvania, and other large State delegations. They said, "We represent the votes." Each man carried a dinner pail. This parade, the assaults of the newspapers on the "free whiskey platform," telegrams from prominent people at home, speeches from men like Colonel R. G. Ingersoll, Albert J. Beveridge, Colonel DeWitt C. Wallace, and others, to each State delegation in turn, showing how easy it would be to elect Gresham, brought the representatives of the special interests and the practical politicians to their knees.

Following the "Tin Bucket" parade Senator Quay made his second visit to Judge Gresham, but without exacting any pledges. The ground swell was so strong that even Joseph Medill was for a time converted to the idea that "the lone hand would win." But his candidate told him, "No." And then the old man went back to the conventional methods, but could not get his candidate to make the desired pledges. H. A. Orth, a son of the old congressman, had promised some of the West Virginia delegates all the offices they wanted if they would vote for his candidate, Judge Gresham. They said, "All right, let's go and call on the Judge." The call was made and in the presence of Orth the West Virginians bluntly asked if his agreements would be honored. The Judge answered, "While Mr. Orth is my friend, I cannot make any agreements as to the future." In telling of the incident, Mr. Orth said,

"If Judge Gresham had not been in Chicago, I would have held my men."

Chauncey M. Depew told the railroad men, "Nominate Gresham, and he will Wabash all of us." Thomas C. Platt talked of nominating Alger and Depew. Senator Teller, in meeting this talk, did not mince words. The nomination of Alger, who had nothing but money, and Depew, who was smirched with lobbying and corrupting the New York legislature with Erie and New York Central money, would be a disgrace, he said. General Harrison, he said, could not be elected because of the opposition of the labor and greenback vote.

When the Harrison managers secretly brought forward the alleged speech of Judge Gresham against the Germans at Lowden's School House in Harrison County in 1855, German editors and Germans from Harrison County said it was not true.

The proceedings of the Convention show how it was manipulated. After the platform was adopted the roll of the States was called for nominations.

Illinois, through Leonard Swett, who had been one of Abraham Lincoln's friends, presented the name of Walter Q. Gresham. It was seconded by C. K. Davis of Minnesota, John R. Lynch, the colored man from Natchez, Mississippi, and Samuel W. McCall of Massachusetts.

Ex-Governor Albert G. Porter presented the name of General Benjamin Harrison of Indiana, and he gave an admirable delineation of General Harrison's character and ability, but, doubtless thinking of Garfield in 1880, he dwelt on the fact that in 1880, when Indiana was an October State, Albert G. Porter, as a candidate for governor against a united party with a State candidate for Vice-President, had carried the State by a plurality of 7,000, while General Harrison in 1876 as the Republican candidate for governor had lost the State by the same ratio, and that Mr. Blaine had met a similar fate in 1884. This thrust at General

Harrison and kind allusion to Judge Gresham threw General Harrison's managers into consternation. But what was most important, the Quays and Platts accepted this speech of Governor Porter's as official notification that soon he and a large majority of the Indiana vote would be cast for Gresham. It was this speech, supplemented by the march of the "Tin Bucket Brigade," that sent Quay scurrying to Gresham. There was not the danger that Quay and Platt thought. While Albert G. Porter was a "dark horse" candidate — "no pony," as one of the practical men put it — he was willing to compromise on a place in the cabinet.

Failing to get an understanding with the popular candidate, the practical men brought into play all the arts that in a previous National convention had diverted votes to favorite sons who were utterly unavailable to go before the people. One of the old tricks of a National convention to weaken a strong candidate and keep a weak one in the field was to loan the latter votes. Senator Quay, who had posed as being for Senator John Sherman, made good his word that he was really committed to no one. He and three other of his Pennsylvania delegates actually voted on the first ballot for William Walter Phelps of New Jersey, as a means of holding the New Jersey delegates to Phelps. At the last minute Mayor Fitler of Philadelphia, who had never before been heard of as a Presidential possibility, was brought out and voted for by the delegates from Philadelphia. And thus it was that Senator Quay prevented any of the Philadelphia delegates from keeping their promise to Brainerd to vote for Gresham.

E. H. Terrell of Texas and Jacob H. Gallinger of New Hampshire, seconded the nomination of General Harrison.

Iowa, by W. P. Hepburn, presented the name of Senator W. B. Allison. It was seconded by B. U. Bosworth of Rhode Island.

Michigan, by R. E. Frazier, presented the name of General R. A. Alger. It was seconded by C. J. Noyes of



Massachusetts, Patrick Egan of Nebraska, T. E. Estes of North Carolina, and L. F. Eggers of the Territory of Arizona.

Meantime, there had been an adjournment from one o'clock to three. That it was not decided until the last to put Mr. Depew in nomination was the belief at the time. It was also understood that Governor Porter's speech nominating General Harrison was the circumstance that finally determined this move. The Convention was showing signs of getting away from the practical men. At the adjourned session, Senator Frank H. Hiscock, on behalf of New York, nominated Mr. Depew. It was seconded by G. G. Hartley, as he said, on behalf of one of the congressional districts of Minnesota.

Senator John Sherman of Ohio was presented to the convention by Pennsylvania, by General H. D. Hastings, and seconded by Governors J. B. Foraker of Ohio, and Anson of North Carolina.

Charles E. Smith of Philadelphia, despite objections from other Pennsylvania delegates, presented the name of Mayor E. H. Fitler of Philadelphia.

Senator John C. Spooner closed the nominations by presenting the name of Governor J. H. Rusk of Wisconsin. It was 8 o'clock in the evening when the convention adjourned until 11 A. M. Friday for the balloting.

There were eight ballots in all — three on Friday, the 22d, two on Saturday, the 23d, and three on Monday, the 25th. It is to be remembered that several men who were not even nominated were voted for as favorite sons.

Following the announcement of the third ballot, the Convention adjourned until 8 P. M. At the evening session Mr. Depew withdrew his name. But before the adjournment, Colonel George R. Davis, one of the Illinois delegates, secured the adoption of a motion that Colonel R. G. Ingersoll be invited to address the assembly after the adjournment. As soon as the Convention adjourned, many of the

## THE BALLOTS IN DETAIL

[illegible]

delegates went out. The galleries were crowded. Colonel Ingersoll started in with his old-time eloquence, but soon bluntly declared he was for Gresham. This created a great commotion. A demonstration was begun for Gresham, a counter one for Mr. Blaine, some of the New York delegates started to leave, and Colonel Ingersoll was not permitted to continue his speech. It was claimed Colonel Ingersoll violated the proprieties of the occasion by mentioning the name of a single man. His answer was that it was a mass meeting, and as a member of that body he was for only a single man. "I was talking to Tom Platt right down there before me, and he knew it. And he knew I had a lot more to say." Some papers said this was a great mistake on Ingersoll's part and ruined Gresham's chances, but this was untrue. It really helped him, for after that Platt made overtures.

Within an hour Mr. Gresham walked past Thomas C. Platt's rooms in the Grand Pacific Hotel to Colonel and Mrs. Ingersoll's apartment and thanked Colonel Ingersoll for his speech. Platt and the men on the inside with their spies knew of this.

In the last chapter we copied from the letter of Colonel Ingersoll of May 18, 1888, in which he advised that a promise be given to make James G. Blaine Secretary of State. In nominating Mr. Blaine for the Presidency in 1876 at Cincinnati, the speech of Colonel Ingersoll was the best ever made in a National convention, and Blaine's nomination was prevented only by adjourning the convention. This was brought about by some one asserting in a loud voice that as there were no lights and it was getting dark, they must wait until morning to vote. Meantime, the art of handling a great convention had been advanced. When Colonel Ingersoll reached Chicago and the Judge explained it was not necessary for him to consider Mr. Blaine — which was not unpleasant news to Ingersoll, for he had broken with Blaine — but that he would have to

make pledges to Platt and Quay, "which I will not do" — the Colonel promptly approved the Judge's morals and said, "I will go down with you."

Before he made his final speech, Colonel Ingersoll made a score of speeches to the crowds and various State delegations. Many thought that Ingersoll, Albert J. Beveridge, and the other orators, and the "Tin Bucket Brigade," were carrying the delegates off their feet. There were men in the New York delegation, old friends of President Arthur and ex-Senator Conkling, who favored the nomination of Judge Gresham. Senator Henry M. Teller of Colorado, a native son of New York, was on the ground, pleading with these men in the New York delegation to vote their real sentiments, and telling them how he and Judge Gresham had made it possible for Platt to come back four years before.

That Friday afternoon H. H. Porter, the railroad man in the Angle case, went into the First National Bank where Samuel Allerton, S. K. Nickerson, Lyman J. Gage, and the other capitalists were assembled, and said that Judge Gresham was a dangerous man, and if something was n't done, he would be nominated. But Gresham and Ingersoll knew better.

On Friday, before Depew withdrew, and before a single New York vote had been cast for General Harrison, Thomas C. Platt says that General Harrison, in the event of his election, in consideration of Platt casting his New York votes for him, promised through L. T. Michener, then Attorney-General of Indiana, to make Platt Secretary of the Treasury. Mr. Platt was supported in his statement by Senator Frank Hiscock, J. S. Fassett, and James S. Clarkson. As evidence of Michener's authority to make this pledge, Mr. Platt said Mr. Michener delivered to him, Platt, the following autograph letter, which Platt published when he was not appointed Secretary of the Treasury:

INDIANAPOLIS, June 12, 1888

HON. L. T. MICHENER,

MY DEAR SIR:—

I have to-day, and heretofore, fully explained to you my views upon certain questions, and you are authorized on occasion to explain them to other friends.

Sincerely yours,

BENJAMIN HARRISON.

Henry M. Teller never forgave Mr. Platt for going over to Blaine in 1884. And when the time came to deliver the goods, Teller was one of the senators who helped prevent the consummation of the 1888 deal. He served notice on President-elect Harrison that he and the other silver senators would prevent the confirmation of "a gold bug" like ex-Senator Platt as Secretary of the Treasury. Joseph Medill promised to aid Mr. Teller to make good his threats.

Always on good terms with Thomas C. Platt, after the entire story came out, Robert G. Ingersoll often rubbed it into the "Easy Boss": "Now, Thomas, if you were only Secretary of the Treasury, we would not be in this awful silver muss."

That Friday night, or rather between 1 and 2 A. M., at a caucus in the Gresham headquarters in the Grand Pacific Hotel, after it had been agreed by Thomas C. Platt to give General Harrison "part of the New York delegates," it was decided there should be no nomination on that day, Saturday, but that the convention should adjourn until Monday. Mr. Platt was not present at this caucus but was represented by Stephen B. French, one of the New York City delegates. There were present Senator Charles B. Farwell and George R. Davis of the Illinois Delegation; Senator Quay, Senator Aldrich of Rhode Island, and representatives from California, Iowa, Minnesota, Missouri, and Michigan. Senator Farwell was made chairman of this meeting.

While this caucus was in progress, Patrick Ford, another

of Platt's lieutenants, was telling John C. New, in the Harrison headquarters in the Grand Pacific Hotel, that General Harrison's Chinese record and his antipathy to the Irish would certainly lose him New York if he should be nominated. Ford, it was said, worked Mr. New up to a great state of excitement, but it was nothing to compare with the consternation he produced the next night in the Harrison headquarters.

In those days the real work of a National convention was often done by a few men in a caucus. At a later and smaller caucus, of which the newspapers did not even get a trace, or at least made no mention, Quay proposed to nominate Major McKinley. All agreed but Platt, and his objection prevailed. He afterwards said his reason was that, after the experience with Garfield in 1880, he never would trust an Ohio man's pledge in a National convention. Partly out of resentment, Platt opposed McKinley's nomination in 1896, when it was patent long in advance that it was inevitable; but he was also a man of ideas, and this was one of the means of forcing the McKinley men to the adoption of the gold standard in the platform of that year.

The Convention met on Saturday at 11 A. M., and there were two more ballots.

Stephen B. French and thirteen others of the New York delegates withheld their votes from General Harrison and scattered them for Blaine and other candidates.

At two in the afternoon the Convention took a recess to four, and then adjourned, by a vote of 492 to 316, to Monday morning. New York voted solidly against adjournment. As to what this meant, Mr. E. W. Halford stated in his telegram to his paper, the *Indianapolis Journal*, that appeared by special train the next morning in Chicago: "New York's support of General Harrison will be withdrawn on Monday. Platt, George R. Davis, chairman of the Illinois delegation, the Californians who are making believe for Blaine, form the combine that controls

## THE FOURTH BALLOT

## THE FIFTH BALLOT

STATES	Total vote	Sherman	Gresham	Alger	Harrison	Allison	Blaine	Lincoln	McKinley	Foraker	Douglas	STATES	Total vote	Sherman	Gresham	Alger	Harrison	Allison	Blaine	McKinley
Alabama.....	20	8	10	1								Alabama.....	20	9	8	2			1	
Arkansas.....	14		14									Arkansas.....	14		14					
California.....	16					16						California.....	16							
Colorado.....	6	3	1	2								Colorado.....	6						16	
Connecticut.....	12	4	1	6					1			Connecticut.....	12		3	2			6	
Delaware.....	6	1	5									Delaware.....	6	1	5				6	1
Florida.....	8	2	4	2								Florida.....	8	2	1	5			1	
Georgia.....	24	19	1	2		1						Georgia.....	24	20	1	2				
Illinois.....	44		41	3								Illinois.....	44		41	3				
Indiana.....	30		30									Indiana.....	30		29					
Iowa.....	26		26									Iowa.....	26		1	26				
Kansas.....	18	3	8	5								Kansas.....	18	3	8	5				
Kentucky.....	26	10	2	3	6	2	1		1	1		Kentucky.....	26	7	2	8	6	8	4	1
Louisiana.....	16	9	2	3	2							Louisiana.....	16	9	2	3	2			
Maine.....	12	2	1	3	2	4						Maine.....	12	1	1	3	2	5		
Maryland.....	16	6	8	2								Maryland.....	16	6	1	6				
Massachusetts.....	28	7	1	8	8	2			2			Massachusetts.....	28	5	1	4	10	3	4	1
Michigan.....	26		26									Michigan.....	26		26					
Minnesota.....	14	5	2	7								Minnesota.....	14	3	3	7				
Mississippi.....	18	14	3			1						Mississippi.....	18	15	2	3			1	
Missouri.....	32	21	13	3	1	1						Missouri.....	32	1	10	14	2		1	
Nebraska.....	10	3	2	5								Nebraska.....	10	3	2	5			2	1
Nevada.....	6		4	2								Nevada.....	6		4	2				
New Hampshire.....	8	1	1	5	1							New Hampshire.....	8		4	8				
New Jersey.....	18	2	2	7	3				4			New Jersey.....	18	1	2	4	5			
New York.....	72	1	3	59	1	8						New York.....	72	1	5	58	1		6	6
North Carolina.....	22	13	1	6	2							North Carolina.....	22	11	9	2				
Ohio.....	46	46										Ohio.....	46	46						
Oregon.....	6	4	1	1								Oregon.....	6	4	1	1				
Pennsylvania.....	60	53		7								Pennsylvania.....	60	53		7				
Rhode Island.....	8			8								Rhode Island.....	8			8				
South Carolina.....	18	6	10	2								South Carolina.....	18	6	10	2				
Tennessee.....	24	9	2	1	4							Tennessee.....	24	5	10	2	1	4		
Texas.....	26	7	3	1	9	1		2				Texas.....	26	7	3	2	2	11		1
Vermont.....	8		8									Vermont.....	8		8					
Virginia.....	24	10	3	8	3							Virginia.....	24	10	2	7	3	2		
West Virginia.....	12	2	1	3	2			2				West Virginia.....	12	2	2	3	3		2	3
Wisconsin.....	22	2	20									Wisconsin.....	22	2	20					
Arizona.....	2		2									Arizona.....	2		2					
Dakota.....	10	2	1	4	3							Dakota.....	10	1	1	5	3			
Idaho.....	2		1	1								Idaho.....	2		1					
Montana.....	2	1	1									Montana.....	2	1	1					
New Mexico.....	2	1	1									New Mexico.....	2	1	1					
Utah.....	2		2									Utah.....	2		2					
Dist. Columbia.....	2		2									Dist. Columbia.....	2		2					
Washington.....	6	3	2	1								Washington.....	6	3	2	1				
Wyoming.....	2	2										Wyoming.....	2	2						
Total.....	832	235	38	135	217	88	42	1	11	1	1	Total.....	832	224	87	142	213	99	48	14

the convention." George R. Davis had been elected the Illinois member of the National Committee and it was then known that he would be, as he subsequently was, a member of its Executive Committee, with Senator Quay as its chairman. Mr. Halford further said: "As I intimated, the action of New York was more of a feint than a sincerity, and was not permitted to go beyond the point where it could be controlled."

As to New York voting solidly against adjournment at 4 P. M., as French, Platt's "representative," had at 2 A. M. of the same day agreed that the Convention should be adjourned without a nomination, Mr. Halford said in this dispatch to the folks at home: "New York skilfully voted No, still further to throw dust in the eyes of the delegates and the people." And finally, after saying, "I do not pretend to know who they will nominate on Monday," voiced his heart's desire, "I do not think they will nominate Gresham."

Immediately upon the adjournment of the Convention Thomas C. Platt and Matthew Stanley Quay caused the report to be circulated throughout the crowds, the corridors of the hotel, and the delegates, that at the next session of the Convention, on Monday, New York's seventy-two votes would be cast for some other candidate than General Harrison. Stephen B. French was one of the men through whom Platt spoke. Patrick Ford was another. Again Ford called on John C. New. "Your man is a dead one," he said. "We have given you New York's vote to-day, and with that you cannot scrape up enough votes to nominate. You had ample time to make your alliances." According to one newspaper man's report, Ford's talk made New frantic.

Quay, still professing to be for Sherman, to keep the Pennsylvanians from going to McKinley, told the New Jersey people, "On Monday New York will vote for Blaine and Blaine will be nominated." This was carried directly to the Harrison headquarters. Saturday afternoon, Senator Platt began again his flirtation with the Gresham people. That very afternoon and Saturday night, and afterwards, Platt said, "Gresham will be the easiest of all to elect." Again Senator Farwell, Joseph Medill, William Penn Nixon, and George R. Davis wanted pledges made.

I was present when Mr. Medill called on Judge Gresham and said, "We can nominate you now if you will only let



me say you will stand as the platform is written." "Not for the Presidency, Mr. Medill, with my consent can you make such a statement about me." The same was said to William Penn Nixon when he called and stated he wanted to make a similar statement in the Chicago *Inter-Ocean*.

Thomas C. Platt understood Walter Q. Gresham's position thoroughly. His pretended overtures that Saturday afternoon and night and Sunday morning were a feint. He knew that they would not be accepted. But they produced consternation in the Harrison and Blaine camps. John C. New could not eat any dinner that Saturday evening, and, declared the newspaper boys, he said if Gresham was nominated he would sell out his Indianapolis *Journal* and all his Indianapolis property. Platt's New York delegates transferred to Gresham, would have transferred to him all but Editor Halford's vote and that of two or three other of the Indiana delegates. John Overmeyer, one of the Indiana delegates, was saying, "I have voted my last ballot for Harrison. Under the arrangement with the Harrison men on the delegation made with me, they must reciprocate on Monday and vote for Gresham." If you don't believe John Overmeyer was a practical politician, go back and read the Jennings County case.<sup>1</sup>

By holding up the specter of his rival's nomination, Platt could not force Gresham to make a pledge. "The biggest coward on earth is the man who is afraid to lose." But when he suggested to the Harrison people that Gresham would make a most available candidate, Mr. Platt says he got the further assurances he wanted. While Platt's closest friends in the New York delegation were telling the boys on Sunday morning they would not vote for Harrison, and that they would not need "Chauncey's money with Gresham to make a campaign in New York" (Depew had said that if, Gresham was nominated, no money could be raised for the ticket in New York), the wily Stephen B. Elkins, with Mrs.

<sup>1</sup>See page 477.

Elkins, took Mr. Platt and Mrs. Platt for a Sunday morning ride. Instead of going to church, they drove to Lincoln Park. As they drove along, Mr. Elkins said, "Platt was very uncommunicative" until he (Elkins) showed him a letter from General Harrison and the telegram of Mr. Blaine, received that morning, in which Mr. Blaine said that Elkins was authorized to withdraw his name should it be presented the next day. Then, he said, Platt agreed to support Harrison on the morrow. He said he did not promise Platt on behalf of Harrison that Platt would be Secretary of the Treasury. Platt claimed Elkins made that promise, and that the letter of General Harrison to Mr. Elkins authorized the latter to speak for the former. Both the letter and the telegram Mr. Elkins retained in his own possession and never produced them.

At a caucus of the New York delegation that Sunday afternoon, Mr. Platt later stated that he told the New York delegation of the renewed pledge to make him Secretary of the Treasury, and then it was he said they for the first time unanimously agreed to support General Harrison, as they did on the morrow, Monday morning, when General Harrison was nominated.

In his report to the *Indianapolis Journal* on Tuesday, June 26, of how the nomination came about the day before, Editor Halford said:

Every friend of General Harrison should feel kindly towards Mr. Elkins, and indeed towards all the close friends of Blaine, as well as towards the splendid New York delegation, whose candor and unanimity, misunderstood for a time, probably, really dictated the nomination of Harrison.

Who was this splendid New York delegation? Certainly not Chauncey M. Depew, who it is said had arranged long in advance with Steve Elkins for General Harrison's nomination. Doubtless Chauncey and Stephen thought they had settled it long in advance, but Thomas C. Platt cer-

tainly changed the status of affairs after the Convention met, and made good the word that Senator Henry M. Teller sent from the United States Senate Chamber to Judge Gresham, that Platt would show his power in the convention. In 1892 in the Minneapolis convention Platt voted forty-five of New York's seventy-two votes against Harrison's renomination, with Mr. Depew on the ground marshaling, to use one of Platt's expressions, "the bread and butter brigade," or the officeholders.

In 1888 the Secretaryship of the Treasury was in everybody's mind. In nominating Levi P. Morton of New York for the Vice-Presidency, ex-Senator Warren Miller of New York said: "New York now not only has the Presidency but also the Secretary of the Treasury."

It was in the early days of the convention that Platt had agreed that if Senator Miller would vote as he desired in the Convention, when they got home, Platt would nominate Warren Miller for governor. Platt kept his word with Miller, and that was all Miller got, for Quay, as chairman of the National Committee, traded Miller off for votes for Harrison and Morton.

Before the delegates left Chicago, General Harrison telegraphed that he wanted as his representative on the National Committee, General W. W. Dudley, soon to become famous or infamous as the author of the "Blocks of Five" letter.

## CHAPTER XXXVIII

### THE "BLOCKS OF FIVE" CASE

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HARRISON'S CAMPAIGN FOR VOTES — DUDLEY'S "BLOCKS OF FIVE" LETTER — NEED FOR REFORM OF ELECTION LAWS — BLAINE MADE SECRETARY OF STATE — FRICTION WITH THE PRESIDENT — DUDLEY'S THREATS TO EXPOSE CAMPAIGN SECRETS — REASONS WHY HE WAS NOT INDICTED — CLAYPOOL MADE DISTRICT ATTORNEY — HE SOON RESIGNS — CRITICISM OF JUDGE WOODS — LEGISLATION REPEALED.

WALTER Q. GRESHAM was not the disappointed man some people attempted to make him out to have been over the 1888 Convention. He was never in better health and spirits since he had recovered from his wound; indeed he thought he had made a most fortunate escape from being traded into a nomination on a platform upon which he could not stand.

Albert G. Porter and John Sherman were the sore men who came out of that convention. Mr. Porter refused to become the Republican candidate for Governor of Indiana for fear he might, as one of General Harrison's friends said, "pull Ben through in Indiana." Instead, General A. P. Hovey was nominated on a platform written by Editor Halford. This State platform demanded honest elections and condemned the Democratic frauds of two years before against the election franchise, especially the tally sheet forgeries.

As candidate for President in 1888, General Harrison's forensic ability came into good play. He received at Indianapolis many delegations both from Indiana and other States, and met them with short, eloquent addresses. Economic conditions, the charge that the platform he was attempting to stand on was a free whiskey one — the Prohibitionists led by Colonel Eli F. Ritter<sup>1</sup> were coming strong — forced General Harrison, as the candidate of his party, to

<sup>1</sup> See page 389.

abandon its platform, and to say that the tariff should be reduced. "The only question is," he said, "shall it be reduced by its friends or its enemies. We will reduce it." As will appear later on, "General Harrison could talk but could not act." Four years later, in stating in an open letter his intention to vote for Grover Cleveland, Judge Gresham adverted to "the pledge on the stump."

But notwithstanding General Harrison's admirable presentation of the Republican side during the dog days, when the sixty-day poll of Indiana was taken, that is, an enumeration of all the voters in the State sixty days before the election, it showed Mr. Cleveland had Indiana by a considerable plurality. Then it was that General Harrison appealed to Senator Quay, chairman of the Republican Committee, for funds. Senator Quay sent word back that the electoral vote of New York would be cast for Harrison and Morton, that General Harrison's friends had pledged the vote of Indiana to the Republican party if he was nominated at Chicago, that he would be held to that pledge, and the National Committee had no funds for him to use in Indiana.

This answer of Senator Quay, General Harrison communicated to his party friends in Indiana, as a reason why they should again "go down into their pockets." After a conference, James N. Huston, chairman of the Indiana State Central Committee, appeared in Chicago and said Indiana was lost unless they had money. He was reminded of what had been said in General Harrison's behalf in June before, that if General Harrison was nominated, he and his friends would carry Indiana without outside aid. "No matter what we said then, Indiana will vote for Cleveland next month unless we get money in the meantime," was Mr. Huston's reply. Chicago gave Mr. Huston all the money he asked for.

September 21, John C. New, the member of the National Committee from Indiana, at Omaha, where he was soliciting funds to be used in Indiana in November, said, "A

complete poll shows where the floaters are, and you can depend on it we will not lose any of that element."

On October 31, there appeared in the Indianapolis *Sentinel*, the Democratic organ, the famous Dudley "Blocks of Five" letter, dated at New York, October 24, 1888. The letter was written on stationery of the Republican National Committee, and its most material parts follow:

# HEADQUARTERS REPUBLICAN NATIONAL COMMITTEE

91 FIFTH AVENUE

## EXECUTIVE COMMITTEE

S. Quay, <i>Chairman</i>	J. S. Clarkson, <i>Vice-Chairman</i>
J. S. Fassett, <i>Secretary</i>	Wm. W. Dudley, <i>Treasurer</i>
John C. New	A. L. Conger
G. A. Hobart	Samuel Fessenden
George R. Davis	J. Manchester Haynes
M. H. De Young	Wm. Cassius Goodloe

DEAR SIR:

New York, Oct. 24, 1888

I hope you have kept copies of the lists sent me. Such information is very valuable and can be used to great advantage. It has enabled me to demonstrate to friends here that with proper assistance, Indiana is surely Republican for Governor and President, and has resulted, as I hoped it would, in securing for Indiana the aid necessary. Your committee will certainly receive from Chairman Huston the assistance necessary to hold our floaters and doubtful voters, and gain enough of the other side to give Harrison and Morton 10,000 plurality. Divide the floaters into blocks of five, and put a trusted man with necessary funds in charge of these five and make him responsible that none get away and that all vote our ticket.

That afternoon there appeared in the Indianapolis *News*, which was supporting General Harrison, a letter from State Chairman Huston, in which he said: "Colonel Dudley has nothing to do with the management of the Indiana campaign." In so far as the letter suggested improper means, Mr. Huston said he repudiated it. Then editorially, the *News* said:

It is the letter of a scoundrel. We do not believe that Colonel Dudley wrote it; we have always regarded him as an honest man. But if he did write it, he is a scoundrel. The letter is a plain invitation to debauch the suffrage.

Sim Coy's crime was not greater. He simply did by brutal forgery what is here sought by corrupting others. If anything, this is worse, for it creates a purchasable quantity, to be turned loose to act and react on every election.

There had been no disloyalty in the Republican organization. The curiosity of a Democratic railway mail agent on the Ohio & Mississippi Railroad from Cincinnati to St. Louis, now a part of the B. & O. system, who believed in those days of corruption that his party allegiance was paramount to his official duty, caused him to open one of the many letters of a certain kind passing through his hands, bearing the stamp of the Republican National Committee. Seeing its importance as a political document, this official, or good loyal Democrat, took it to the chairman of the Democratic State Central Committee of Indiana. The name of this clerk never was publicly disclosed, nor that of the addressee, a well-known practical politician. Meanwhile a list was made by the Democratic railway mail clerk of the addresses of all similar letters passing through the mails. The total was large.

The simultaneous appearance of the Dudley letter, with screaming headlines in all the leading newspapers of the country, for a time rattled Chairman Quay<sup>1</sup> — "the only time Matthew Stanley was ever perturbed in a political battle." He told Dudley: "You have made a mistake in attempting to deal with any one in Indiana except Chairman Huston of the Indiana State Central Committee." The fact is, Dudley was dealing with the *de facto* chairman, one of General Harrison's *ipse dixits* at Chicago. Two years later, Mr. Michener became General Dudley's law partner at Washington and that relation continued until Dudley's death. Recovering his equanimity, Quay said:

<sup>1</sup>See page 651.

"Another Democratic lie!" And although it was an autograph letter, Colonel Dudley denounced it as a forgery and promptly instituted suits for libel against the *New York World*, *Post*, *Times*, and *Commercial Advertiser*. When the *World* obtained an order for his examination under oath as to who wrote the letter, he dismissed his suits.

Quay's next move was to put the former famous secret agent of the Treasury, E. G. Rathburn, on the case, and soon they knew the name of the mail clerk. Then Senator Quay caused this clerk and the Democratic organization to be advised that as soon as he got around to it, there would be a prosecution for stealing a letter from the United States mails. It was Quay's genius and force and Dudley's nerve that saved the latter.

General Harrison carried Indiana by a plurality of 2,300 votes over Mr. Cleveland. The day of the election, November 7, Judge Solomon Claypool, a Democrat and the special Assistant United States District Attorney who had helped prosecute Coy and other Democrats who were still in the penitentiary, discussed Dudley's offense with Judge William A. Woods in the latter's chambers. Under Section 5511 of the Revised Statutes of 1875, Judge Claypool and Judge Woods said Dudley could be indicted and convicted.

To the Federal Grand Jury that assembled the Monday following the election, November 13, Judge Woods delivered elaborate instructions. As bearing on the Dudley letter, he said:

While it is not a crime to attempt the bribery of a voter, it is a crime to advise another to make the attempt. If A attempts to bribe B, that is no offense under this statute (5511), but if A advises B to attempt to bribe C, then the one (A) who commends or gives this advice is an offender under this law; and I say there is some wisdom in this provision.

Under section 731, the offense may have its beginning in one State and be completed in another.

And finally, the man to whom the letter was sent was not guilty.



Meanwhile, from the time the mail clerk had turned over the Dudley letter, the Democrats and the Assistant United States Attorney, Leon O. Bailey, had been gathering evidence of actual bribery. Emory Sellers, the district attorney who had pressed the Coy prosecutions, it is said, hung back from the start.

The New York *World* began to gather evidence against Dudley as soon as it was sued by him. It showed that vast sums of money had been raised and expended in New York. More than 100,000 votes, as it claimed, in New York State alone had been purchased by the Republican National Committee.

Better election laws were being demanded all over the land, and especially in Indiana. This was to meet the objection that while Dudley's acts were reprehensible, they were not criminal in the eyes of the law or the statutes as it or they then stood. And, of course, there was something in this objection, but it could not be advanced by the Republicans and Judge Woods, who had shoved the pendulum to the extreme in prosecuting Democrats.

George B. Hastings, a representative of the New York *World*, came to Chicago to interview Judge Gresham, followed him to Indianapolis, where he was holding court, and on November 26, 1888, sent the following telegram to his paper:

Your correspondent asked Judge Gresham if in his judgment the legislature that will convene in January will reform the existing election laws, which have brought the State into so much disrepute. His answer was prompt and emphatic:

"There ought to be a reform in our State election system," he said, "and unless the State takes steps to stop the corruption at the polls, a condition of affairs will be produced to which the Rebellion will not be a circumstance.

"It is the Pharisees who are doing this. It is the men of prominence and respectability who raise these large sums of money, knowing the use that they will be put to; men who deal

openly in corruption one day and go to church the next. It is these men who bring disgrace upon the State. You may convict a hundred—yes, even a thousand—obscure voters for bribery, but the effect upon the community would be as nothing compared to that which would follow the conviction of one prominent man.”

But at that Walter Q. Gresham would not use the judiciary for partisan purposes. This will clearly appear at the end of the chapter.

Editor Holliday was still supporting General Harrison, and although the Indianapolis *News* came out for better election laws, it deprecated Judge Gresham's remarks and called on him for his proofs as to the corrupt use of money in elections.

At this time all the large daily newspapers of the land had special correspondents at Indianapolis. All were on cordial relations with the President-elect. The night of November 24, John T. McCarthy telegraphed his paper, the Cincinnati *Enquirer*, a dispatch that was printed the next morning in a conspicuous place as a “special” from New York:

Will Colonel Dudley be made a scapegoat? There have been various rumors to this effect, and some have even gone so far as to claim the famous Dudley letter published during the campaign went direct from the Republican State Central Committee rooms at Indianapolis to the Democratic headquarters. John C. New, never a friend of Dudley's, and “Nels” Huston, the Republican chairman, are both incensed at Dudley for interfering in the campaign.

Dudley promptly answered from Washington, through the press, that if he was prosecuted he “would explode a lot of dynamite,” that he would not be made a scapegoat.

Then the newspaper men said that General Harrison was behind the prosecution in Judge Woods' court so far as General Dudley was concerned, and that Dudley would be prosecuted to the end by the incoming administration and Judge Woods put in the cabinet or in the Supreme

Court. The reason given for prosecuting Dudley was that General Harrison had not been in sympathy with Dudley's methods and wanted to disavow him in the most pronounced manner. And one newspaper man confirmed it by publishing an interview with Judge Woods, in which the latter avowed his desire to go to the Supreme Court.

Dudley again answered through the press that what he meant by "exploding a lot of dynamite" was, that he would expose the entire inside workings of the Republican National Committee. Then there was a change all along the line. The Indianapolis *Journal*, John C. New's paper, became Dudley's defender. Every move was then chronicled in the press.

The President-elect had other troubles. To the proposition to make Mr. Blaine Secretary of State, Editor Holliday and the other independents who had supported General Harrison so effectually during the campaign, proved implacable. To the suggestion that Mr. Blaine might be the Premier, the Indianapolis *News*, on December 7, 1888, responded: "No, . . . a corrupt and unsafe man."

General Harrison had always belonged to the Blaine wing of the Republican party, and in National conventions had voted for Mr. Blaine as a proper man for President. Why, then, should he refrain from saying Mr. Blaine should be Secretary of State? After the election, however, powerful pressure was exerted to prevent him from doing so. It was so great that no announcement was made, and it was not certain that Mr. Blaine would be at the head of the State Department until his name actually went to the Senate, when there were outbursts such as that to which Editor Holliday gave way, while the Blaine men claimed they had forced General Harrison to it. And never again, from the day Mr. Blaine entered the State Department, was there complete harmony between the Secretary of State and the President.

To the proposition to announce ex-Senator Thomas C. Platt as the Secretary of the Treasury, which the Republican National Committee, with Senator Quay as its chairman, was demanding and Mr. Platt was claiming had been promised to him at Chicago, the independent or Mugwump press and Editor Holliday at Indianapolis would not assent. Editor Joseph Medill came down from Chicago, "on the repeated invitation of the President-elect," as he informed the young newspaper men, and told General Harrison it would not do to make Mr. Platt Secretary of the Treasury. "Old Joe" Medill was a great man among the boys. To a "cub" reporter who came to interview him, he said: "Mr. Driggs, don't you think it pretty cheeky for a young newspaper man like you to interview an old newspaper man like me?" And then he gave the young man what he wanted. And as stated in the last chapter, Senator Henry M. Teller of Colorado came and threatened to defeat Mr. Platt's confirmation.

Instead of taking "a man from the curb," as Benjamin H. Bristow described William H. Windom, who was made Secretary of the Treasury, General Harrison might have fared better had he made Platt Secretary of the Treasury, if Teller had not defeated his confirmation. For the "Easy Boss" would have run the "Street" as easily as he did the National Convention, and would no doubt have prevented Senator Teller from passing the Sherman Silver Act.

Never after the suggestion to make Mr. Blaine Secretary of State did Editor Holliday and his Indianapolis *News* criticize Judge Gresham.

December 9, Judge Woods adjourned the Grand Jury for one week because he said he must go to Fort Wayne to hold court. The newspaper men reported that the next day he held court just one hour and forty minutes at Fort Wayne.

December 12, Emory Sellers, the United States District Attorney, resigned. At once he was confronted with the charge that he was deserting his post, that he did not resign

when Judge Woods drew the indictment in the Coy case. From the penitentiary Coy sent out the interview that Sellers was in the conspiracy to prosecute Democrats and protect Republicans. Sellers answered that he had determined to resign before the election, before the Dudley exposure.

When Judge Woods adjourned the Grand Jury on the 9th, Assistant District Attorney L. O. Bailey had forty Republican county chairmen under subpoena, and most of them had then been before the Grand Jury. Mr. Sellers recommended Judge Sullivan, an excellent lawyer on the civil side but without experience in criminal law, as his successor. Instead, President Cleveland sent to the Senate Bailey's name, and reappointed Judge Solomon Claypool as special counsel to assist in prosecuting the election cases.

The night of December 17, Senator Quay arrived at Indianapolis. The next morning John C. New accompanied the Senator to General Harrison's residence, where the Senator and the President-elect had a two hours' conference all alone. That afternoon the Senator returned to Washington. Immediately following Senator Quay's visit there began conferences between Judge Woods and General Harrison's law partner, W. H. H. Miller, and John B. Elam, in which General Harrison participated.

On the 20th, the Indianapolis *Journal* had a scoop from Washington that Bailey would not be confirmed as district attorney. The possibility of an indictment for conspiracy, drawn after the model of the Coy indictment, to affect the vote of Indiana, was suggested on the morning of the 21st by the Democratic organ, the *Sentinel*, as to why Bailey would not be confirmed by a Republican Senate. There was no question about Bailey's legal ability and qualifications.

Then on the 21st, the Grand Jury came into court and asked for further instructions. Without giving any reasons, Judge Woods refused, but said privately: "If they indict Dudley, they can do so on their own responsibility. Their shoulders are broader than mine."

On December 24, when the Grand Jury adjourned for the holidays, Judge Woods caused it to stand adjourned to January 14, because he would hold court at Evansville the first week in January. Thereupon the Indianapolis *Journal*, Mr. New's paper, said the prosecutions had failed and that Dudley would not be indicted. The next day the new district attorney, Bailey, in an interview in the *Sentinel*, said he would be very busy during the intervening time drafting indictments that had been voted and would be signed when the Grand Jury reassembled.

January 4, Bailey asked that his name be withdrawn from the Senate because Judge Woods had informed him that an indictment, to be valid, must be signed by a district attorney who had not only been appointed but also confirmed.

Under the Federal statutes, to provide for such a contingency as Judge Woods had suggested about there being no district attorney to sign indictments, the justices of the Supreme Court were authorized to appoint district attorneys *ad interim*. Promptly on the withdrawal of Bailey's name, ex-Senator McDonald called on Justice Harlan, the circuit justice, and requested him to appoint Bailey district attorney *ad interim*. This Justice Harlan refused to do, but was finally prevailed on to appoint Judge Claypool *ad interim*, and then Mr. Cleveland immediately sent Judge Claypool's name to the Senate, while Bailey continued as the assistant.

Again Dudley renewed his threats. Among the practical politicians in Indiana he had powerful friends. He had narrowly escaped being nominated for governor by the Republicans of Indiana in 1884. These men, in person and by their attorneys, visited the President-elect and the Attorney-General-to-be, William H. H. Miller. Some importuned, others threatened.

One of the latter class was Nathaniel V. Hill, a recipient of one of Dudley's letters, the chairman of the County

Committee of Monroe County. Afterwards he was elected Treasurer of Indiana. He was known as "Nat" Hill. Right under the shadow of the Indiana State University at Bloomington in Monroe County had the electorate been corrupted. When rumors were rife that Dudley was to be indicted, if "Nat" is to be believed, he called on General Harrison and after saying, "We can't repudiate Dudley now," continued, "If these prosecutions go on, I will go to the penitentiary at Jeffersonville, and you, instead of going to Washington March 4, will be on your way to the Michigan City penitentiary."

January 14, Arthur E. Bateman, Dudley's financial partner, was closeted two hours with President-elect Harrison.

The Grand Jury was about to make a report, having assembled on the 16th of January, pursuant to adjournment, when it was called before Judge Woods, who then without any request from the jury for enlightenment as to the Dudley scheme, but after elaborating it at length, on coming to the gist of the matter said:

The mere sending by one to another of a letter or a document containing advice to bribe a voter, or setting forth a scheme for such bribery, however bold and reprehensible, is not indictable.

Colonel Dudley was not indicted, but indictments were returned against two hundred others, all Republicans. Among them were some of the workers in Monroe County, but "Nat" Hill escaped.

The next morning, the Indianapolis *Sentinel*, the Democratic organ, in an editorial, said in part:

The spectacle of a judge deliberately and unblushingly prostituting his office to the service of a notorious scoundrel in jeopardy of the law, is a painful and shocking one under any form of government and in any stage of civilization. But it is more painful and more shocking in this Republic, perhaps, than in any other country on earth; because in our scheme of government the judiciary occupies a higher position, fills

a larger field, is clothed with greater authority, and is regarded by the people with more respect and reverence than under any other branch of the government.

Then, after stating that the indictment of Dudley would have led to revelations that could not but leave a cloud on the title of the President-elect, the editorial proceeded:

As the probability of his indictment developed into a practical certainty, the pressure was redoubled, and finally, all other expedients having failed, Judge Woods was induced to call the jury before him and tell them that he had misstated the law to them, and that they had no right to indict Dudley unless certain things not susceptible of proof could be established. The *Sentinel* is informed and believes that this action was taken after consultation with and upon the importunities of men as close to Benjamin Harrison as his recent law partner.

The occasion is one that calls for the plainest of plain speaking. If the bench fails us, an honest and fearless public press must supply the deficiency, so far as it is in our power. Weighing our words carefully, and fully prepared to accept all the consequences, we pronounce the course of Judge Woods in this matter a monstrous abuse of his judicial opportunities, and a flagrant, scandalous, dishonorable, and utterly unprecedented perversion of the machinery of justice to the purposes of knavery.

Solomon Claypool, the district attorney, said the second instructions were wrong and the first right, under the rulings of the Supreme Court in the Coy case. Ex-Senator McDonald and John M. Butler, an eminent Republican lawyer, said the first instructions were correct. Partisan Democrats were loud in denouncing the second instructions.

Judge Woods defended himself by saying he had consulted Justice Harlan, who had consented, though reluctantly, to the second instructions. Then the *Sentinel* attacked Justice Harlan for being partisan. In a case where there was such manifest probable cause in view of Justice Harlan's course in the Coy case, the editor said that the course of Justice Harlan and Judge Woods would, if



pursued, certainly lessen that confidence in the judiciary which was essential to its existence.

Early in March, Judge Claypool resigned as district attorney, giving as a reason the manifest opposition of Judge Woods to prosecuting the men indicted, while in the Coy prosecutions he had been so zealous against the defendants, Democrats, that he (Claypool) was forced at times privately to request the Judge to restrain his activities against them. Judge Claypool's resignation was promptly accepted. Smiley N. Chambers was made his successor and John B. Cockrum his assistant, William H. H. Miller having become Attorney-General.

Mr. Chambers, instead of prosecuting, became an apologist for General Dudley. He said the Dudley letters had nothing in them of a criminal character, and when so construed in the light of election practices in Indiana, were honorable and indicated simply a patriotic interest in the elections. And then Judge Woods began quashing the indictments. There was no pretense that the indictments did not charge that a Congressman had been voted for. Again Judge Woods was greeted with a storm of criticism. Then followed this correspondence with Judge Gresham:

DEAR JUDGE: INDIANAPOLIS, March 31, 1889

I desire to make some suggestions and ask you, in your discretion, to take some action in respect to pending criminal cases in my court here. You doubtless know something of the newspaper assaults which for some months have been made upon me in respect to my Grand Jury charges; and now that I have quashed the indictments in certain cases, there is a renewal of the attack, with such a spirit of malignity and evidently persistent purposes of misrepresentation and abuse of the court, as to justify apprehension that fair trials of the cases remaining to be tried, some of which I suppose to be quite important, can not be had. It is hardly possible that jurors, of whatever political bias or faith, can remain unaffected, one way or the other, by these publications. The ruling of the court, which is made the present occasion

of criticism—if it can be called criticism—is in exact accord with the ruling of Judges Brewer and Thayer in *United States vs. Morrissey*, 32 Fed. Rep., and I believe, with your ruling, made about the same time, in the Orange County cases, as they were called—a ruling which was in no manner touched, I think, by the decisions of Justice Harlan and that of the Supreme Court in the *Coy* and *Bernhamer* cases. Now if I am mistaken, I ought to be set right before my ruling is applied to other cases, and while it may be connected in the cases where made; and to this end I suggest that you come and pass upon the questions in the Circuit Court, to which some of the cases can be transferred (by agreement at once), or if you think better, send Judge Allen of Springfield to sit with me (or alone) both in hearing the motions to quash and in trying some of the cases (for bribery) in which I have upheld some of the counts of the indictments. The trials are to begin next Wednesday, and it is therefore important that prompt action, whichever way taken, shall be taken by that time if practicable.

I would not have you understand that I doubt the correctness of my own action, or shrink from its consequences, so far as they may be personal to me, but to the end that wicked clamor may be hushed and the doing of justice in these cases may remain possible, I have concluded to ask your intervention and accordingly beg your early response.

HON. W. Q. GRESHAM,  
CIRCUIT COURT.

Truly yours,

W. A. WOODS.

HON. WILLIAM A. WOODS,  
U. S. DISTRICT JUDGE,  
INDIANAPOLIS, INDIANA.

CHICAGO, April 1, 1889.

DEAR SIR:—

I am just in receipt of your letter of yesterday, informing me that you have quashed a number of indictments for violation of the Federal election laws. You say that your action has provoked severe criticism and abuse, as evidence of which you inclose clippings from some of the Indianapolis newspapers. You further say, "I would not have you understand that I doubt

the correctness of my own action," and ask that I come to Indianapolis and pass upon the same questions in the Circuit Court, to which some of the cases can be transferred by agreement, or that I send Judge Allen to sit with you, or alone, in the hearing of other motions to quash.

The statutes of the United States authorize the district courts to transfer indictments pending therein to the circuit courts, when in the opinion of the district courts such indictments raise "difficult and important questions of law." But, in your opinion, these indictments raise no such questions. It appears that some of the cases are assigned for trial before you on Wednesday of this week, and should you transfer any of them to the Circuit Court it would not be possible for me to be at Indianapolis so soon; and in justice to cases before Judge Allen, I could not now order him away from Springfield. Moreover, the cases are regularly in your court; you have already practically commenced trying them, and as you have no doubt of the correctness of your rulings, I see no reason why you should not proceed in the ordinary way in the discharge of your duty. If a judge is satisfied in his own mind and conscience that he is right, he should not be disturbed by anything said or done by others.

Yours truly,

W. Q. GRESHAM.

HON. W. Q. GRESHAM,  
U. S. CIRCUIT JUDGE,  
CHICAGO, ILL.

INDIANAPOLIS, April 2, 1889.

DEAR SIR:—

Accepting your letter of the 1st inst. as a final declination of the proposition made in mine of the 31st, I beg to add a word of explanation, as my meaning seems to have been misapprehended. Under Secs. 1037 and 1038, I supposed the responsibility of transferring an indictment from the District Court to the Circuit Court rested upon the district judge, but as the transfer by the terms of the statute remits the case to the next term of the Circuit Court, it was proposed, with your consent and that of attorneys, that a hearing should be had in that court at once. You mistake my letter when you say: "But, in your opinion, these indictments raise no such questions," that is, "difficult and important

questions." I do not "doubt the correctness of my action." It is correct action, I suppose, for a judge to decide according to his best belief and judgment, however difficult to reach and however important his conclusion may be. But I will say, "I do not doubt my conclusion," and still it does not follow that *in my own mind* as well as in fact, the questions are not "difficult and important."

There are only a few of the cases in which any ruling has been made, if that is what you mean by saying I have "already practically commenced trying them," but as it is not convenient for you to come or send another to my assistance, I agree that there is no reason why I should not proceed in the ordinary way, and being assured of my "own mind and conscience," shall endeavor not to be too much "disturbed by anything said or done by others."

Respectfully,

W. A. WOODS.

Judge Woods went ahead, and not a man was convicted. The revelations as to Dudley and the threats as to the disclosures he would make if the prosecutions against him were pressed, had discredited General Harrison's administration before it began. The judiciary was in politics. It was attacked in the next Indiana State Democratic platform. The people approved. And at the special session of Congress, called in August, 1893, to repeal the silver bill, the Democrats repealed all the legislation providing for United States marshals and inspectors at the polls and every section of the Enforcement Acts but two which somehow escaped their notice.

## CHAPTER XXXIX

### THE WABASH CASE AGAIN

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JUDGE GRESHAM ASKED TO FILL VACANCY ON THE SUPREME BENCH—PRESIDENT HARRISON REFUSES TO MAKE THE APPOINTMENT—DAWN OF “POPULIST” PARTY—JUDGE BREWER MADE A JUSTICE OF THE SUPREME COURT—THE “NARROW GAUGE” CASE—JUDGE GRESHAM’S DECISION REVERSED BY JUSTICE BREWER—THE PEOPLE’S PARTY FORMALLY ORGANIZED—VICTORIOUS IN FIRST STATE ELECTION—SENDS “SOCKLESS JERRY” SIMPSON TO CONGRESS—THE CHICAGO AND ATLANTIC CASE.

MARCH 22, 1889, Justice Stanley Matthews of the Supreme Court died. In many forms the question arose—as put by an old fellow in Kansas, who subsequently became a Populist—“Will President Harrison put in Matthews’s place the judge who knocked the scaffolding from under Brewer in the Wabash case?” David J. Brewer had been on the Circuit Court of Kansas and was a member of the Supreme Court of that State when he was appointed United States Circuit Judge for the Eighth Circuit.

There were many requests made to President Harrison to name Judge Gresham as Justice Matthews’s successor. But uniformly and positively Judge Gresham requested that all efforts on this line be abstained from. He asked Joseph Medill to stop a demand he had started in his paper for Gresham’s appointment, and Mr. Medill respected his wishes. To General Benjamin H. Bristow’s written request as to whether he should call on President Harrison and request Gresham’s appointment to the existing vacancy, Gresham promptly answered, “Most certainly not.” Then Bristow replied: “Notwithstanding your wishes, in order

that the President can not say that no one ever asked him to appoint you, I am going to Washington and make the request." Subsequently he wrote that he had done so. Men like Judge Cooley and lawyers from all over the land wrote that they had written the President suggesting the appointment of Judge Gresham to the Supreme Bench. Newspapers advocated it, according to press notices. But my husband's attitude toward the Dudley prosecutions make it plain that he was not "trimming his sails" for the Supreme Court. Albert J. Beveridge was one of the men opposed to Walter Q. Gresham's accepting the appointment, if tendered. By refusing to make the appointment President Harrison did not displease everybody.

Already the nebulae of the "Populist" party—many of whose tenets, revolutionary at the time, have since been written into the organic law of the land—had appeared in the Western horizon. In November, 1888, the "Union Labor" party of Cowley County, Kansas, had elected the sheriff of that county. Men were recurring to the protest of the June before of B. F. Osborne, chairman of the Kansas delegation, against making a railroad attorney the temporary chairman of the party of "freedom and progress."<sup>1</sup>

Senator John Sherman's Anti-Trust Bill, to carry out the anti-trust plank of the Republican platform of the June before, introduced into Congress December 9, 1888,<sup>2</sup> met with a cold reception, and this, too, notwithstanding the discussions both public and private that followed the explosion of dynamite on December 10, 1888, in the Shufeldt Distillery at Larrabee Street and Chicago Avenue in the city of Chicago.<sup>3</sup>

The owners of this establishment, H. H. Shufeldt and Thomas Lynch, under the firm name of H. H. Shufeldt & Co., had rejected all the efforts of the "trust" to buy them out. Their attorney, Edwin Walker, and Mrs. Walker were among our intimate friends. Edwin Walker was one of the

<sup>1</sup>See page 584.

<sup>2</sup>See page 632.

<sup>3</sup>See page 639.

eminent lawyers of his time. He afterwards steered the World's Columbian Exposition Company, the corporation that so successfully conducted the "World's Fair." In this Walter Q. Gresham was one of his confidential advisers. Mr. Walker helped prosecute Debs. He was a Republican in politics and a strong protectionist, but he voted for Grover Cleveland in 1892. Mrs. Walker was from an old Democratic family and clung to her father's views. Accomplished, and one of the best housekeepers I ever knew, Mrs. Walker possessed a knowledge of economics, business, and politics, that surpassed that of many of the politicians or statesmen of her day.

Efforts had been made and continued to be made to minimize the force of the Wabash judgment and weaken and discredit the judge who made it. The Wabash opinion stood only for honest management of corporate property. There were railroad attorneys who wanted to be for Gresham in 1888. Church Howe was one of them.

December 9, 1889, President Harrison sent to the Senate the name of David J. Brewer as the successor of Justice Stanley Matthews, and thirty days later the appointment was confirmed. Able and learned, with his social side well developed, popular with bench and bar, Judge Brewer's appointment was looked on, especially west of the Mississippi, whence he came, as part of the plan to preserve, through the judiciary, the undue influence the special interests exerted in the government, as well as rebuke a judge who stood for "the equal enforcement of the law." View it as we may, the fact is that some of Judge Brewer's first judicial opinions confirmed this impression.

We must recur to the receiverships on the Illinois Midland Railroad.<sup>1</sup> Judge Harlan handled that case while Judge Gresham was running the receivership on the "Narrow Gauge." The decree in appeals which went to the Supreme Court from Justice Harlan's decree in the Circuit Court in the Illinois Midland case—especially in

<sup>1</sup>See pages 507-8.

all that applied to paying the "Tin Bucket Brigade," where there was a greater displacement of "vested underlying liens" than in any case that had up to this time been passed on by the Supreme Court—was affirmed, while the decrees in the appeals in the "Narrow Gauge" case were reversed. The questions were the same but the decisions were different.

As we have seen, the appeals in the Midland case were advanced, submitted on brief January 12, 1886, and decided April 15, 1886. The appeals in the Narrow Gauge case went to the Supreme Court contemporaneously with those in the Illinois Midland case, but they took the regular order. They were not decided until the Spring of 1890. The Narrow Gauge case was in part heard by Circuit Judge Jackson of the Sixth Circuit, Circuit Judge Gresham of the Seventh, and District Judge Sage of Cincinnati.

March 17, 1890, the Supreme Court in *Railroad Company vs. Hamilton* (134 U. S. 296), the first of the Narrow Gauge cases to be reached, reversed Judge Jackson's decree in which he put ahead of the first mortgage the claim for a mechanic's lien for constructing a dock at the terminals of the Narrow Gauge system in Toledo. Justice Brewer delivered the opinion of the Supreme Court.

According to the precedents, there was less reason for Judge Jackson allowing this claim than there was for Judge Gresham allowing the claim of the Grant Locomotive Works, in *Kneeland vs. Grant Locomotive Works* (136 U. S. 79), decided May 19, 1890, for the use of engines during the four months of a receivership under a judgment creditors' bill immediately preceding the receivership instituted by the bondholders.

Indeed, every precedent and every expression of the Supreme Court prior to this time justified the decree Judge Gresham entered, and yet Judge Jackson was reversed in becoming judicial language, while Judge Gresham was reversed with a rebuke. If it was necessary to reverse



the practice that had long obtained, the rebuke should have been administered at the first opportunity.

This was the Narrow Gauge case. July 1, 1883, Judge Drummond, at the instance of a judgment creditor or on a bill filed by a judgment creditor, appointed George D. Branham receiver of the Narrow Gauge system of railroads. The bondholders did not object. They stood by until November 1, 1883, when they asked that they be given the receivership and their mortgage foreclosed. That day they were given the receivership. In due time their mortgage was foreclosed, under a decree which practically gave them possession of the road without a sale, conditioned only that they pay such claims as the court might decree to be in equity prior to the lien of their mortgage.

When Branham took possession, he found in the possession of the railroad company certain locomotives belonging to the Grant Locomotive Works. These locomotives were held under leases between the Grant Locomotive Works and the Toledo, Cincinnati & St. Louis Railroad Company, or the "Narrow Gauge Company," with the right to the railroad company to purchase them at any time at a certain price, and with a further provision that when the monthly payment of the rent aggregated the agreed purchase price, the title should pass to the railroad company. From the start the receivers held on to these locomotives, as without them the road could not have been operated. The rolling stock people demanded the rental as stipulated, even prior to the receivership, under the judgment creditor's bill, then during that receivership and the receivership at the instance of the bondholders. The bondholders said there should not only be no allowance for the period prior to the receivership under the judgment creditor, but that no rental should be paid during the receivership of the judgment creditor.

Judge Gresham rejected all claims for rent prior to the receivership instituted on July 1, 1883. For the four

months during the receivership under the judgment creditors' bill, that is, before the bondholders actively intervened, Judge Gresham rejected the claim for rent under the leases, but allowed the rolling stock people compensation for the use of their engines on the basis of about one-third of what was provided for in the lease; that is, on a *quantum meruit* basis.

Now for the rebuke. In order to justify the reversal, Judge Brewer had to go back to Judge Drummond's discarded language in the Chicago & Alton case of 1864.<sup>1</sup> We quote him:

*One holding a mortgage debt upon a railroad has the same right to demand and expect of the court respect for his vested and contracted priority as the holder of a mortgage on a farm or lot.*

Indeed, we are advised that some courts have made the appointment of a receiver conditioned upon the payment of all unsecured indebtedness in preference to the mortgage liens sought to be enforced. Can anything be conceived which more thoroughly destroys the sacredness of contract obligations?

That other than legal and equitable considerations entered into this judgment of the Supreme Court is manifest when we consider that five years later, in an exactly similar case—Louisville Loan & Trust Company *vs.* Louisville, New Albany & Chicago Railway Company (174 U. S. 674)—the Supreme Court reversed itself, the Court of Appeals for the Seventh Circuit, and Judge Woods, who had literally followed Kneeland *vs.* Loan & Trust Company (136 U. S. 97). Again Justice Brewer was the mouthpiece of the court. To justify his conclusion and that of the court, the major premise—that of Judge Drummond in Turner *vs.* Indianapolis, Bloomington & Western Railway (Bissell)—of 1879, was adopted, namely, "*Then a mortgage on a railroad is not like an ordinary mortgage on land.*"<sup>2</sup>

The rebuke at once attracted wide attention, and much resentment. From Maine to California came letters from members of the bar. The explanation vouched privately

<sup>1</sup>See page 372.

<sup>2</sup>See pages 376-7.

by members of the Supreme Court was that the rebuke was intended for Judge Caldwell of the Eighth Circuit, Judge Brewer's successor.

Judge Caldwell in the Eighth Circuit, as a condition precedent to appointing a receiver, had required the bondholders to pay claims for personal injuries and other like claims which in no wise were betterments to the property. As he put it to one attorney, "If you want me to open the door, you must come to my terms,"—a summing up in a sentence of a score of the decisions of the Supreme Court "The appointment of a receiver was not a matter of right." It was Judge Caldwell's view that, in extending the protecting arm of the court, with all the power of the nation behind it, because of the public interests involved, the court making the appointment could impose terms largely within the discretion of the judge to whom the application was made. He had gone farther than Judge Gresham ever followed Judge Drummond, who inaugurated the system; and ultimately Judge Caldwell seems to have had the sanction of the Supreme Court, as appears from the opinions of Justices Brewer and Harlan we have last cited. In other words, that eminent tribunal, as Mr. Lincoln once said in refusing to accept its rulings as final, especially in matters that affect the entire public, has often reversed itself.

Judge Caldwell did not accept the privately expressed views of the Supreme judges that the rebuke in the Kneeland case was aimed at him. On the contrary, apparently with design, he spread the report in the Eighth Circuit that the rebuke was intended for Gresham. In the confidence of his chambers, Judge Caldwell was deft in poisoning the minds of many an attorney against the members of the Supreme Court. "They will never stand for that Wabash case," was one of Judge Caldwell's expressions. And yet, as we have shown, Judge Gresham's judgment in the Wabash case had been confirmed by several acts of Congress.

If it was not aimed at Gresham, the opinion should have been so framed as to exclude that impression, and should have been written by some other member of the court than Justice Brewer, especially as Justice Brewer was a nephew of Cyrus W. Field, one of the financiers whose conduct had been under review in the Wabash case. Even though it be as General Swayne said in a letter to Judge Gresham, "Mr. Field 'got from under' before the trouble came," the fact is, the impression went broadcast, especially throughout the Eighth Circuit, embracing the States of Kansas, Missouri, Iowa, Minnesota, Nebraska, the Dakotas, Wyoming, and Colorado, that the Supreme Court was "dressing Gresham down." And there were men—lawyers—high and low who resented it. And when it comes to digging into the web and woof of things, one lawyer is the superior of dozens of politicians.

In 1889 the information came that the Harrison administration, through its Department of Justice, was searching the records to get something on Judge Gresham. "Afraid of nothing but sin," as Henry Watterson put it, Judge Gresham never ceased "Wabashing" railroad property, when it came his way. But notwithstanding the feeling and the sentiments that Walter Q. Gresham knew the members of the Harrison administration, including President Harrison himself, entertained and manifested toward him, the record is conclusive that in Judge Gresham's court it fared better than at the hands of any other Federal judge, even judges that it created.

Meantime, on September 21, 1889, the People's party was formally born. That day, at Winfield, Kansas, four rural leaders, Mike Markham, Bill Grow, Sam Strong, and Dick Chase, walked out of the Cowley County Republican Convention. They consulted Judge A. J. Miller, and inside of a week they and their followers in the Republican party, under the name of the People's party, were joined by the Democrats and the Cowley County Union Labor

party, then less than a year old. The *American Non-Conformist*, a newspaper that had made much of the Wabash decision, became an advocate of the platform of the new party. The *Non-Conformist* was ably and fearlessly edited by Mr. James Vincent and his son Henry. James was an English Abolitionist. After helping in the clean-up of the British Empire, he moved to America in 1848 and settled in Iowa, thence to Kansas to continue his war against the "divine institution." At Tabor, Iowa, John Brown had a station in James Vincent's house. Meantime, the Vincents became correspondents of Walter Q. Gresham, who made no secret of his views of "men and measures."

In November, 1889, the newly founded People's party carried Cowley County by a good majority. The fast-growing "Farmers' Alliance" joined the new movement, and in 1890 the State that had hitherto been overwhelmingly Republican voted the People's party ticket by 80,000. Out of one hundred and twenty-six members of the State legislature the "Populists" elected ninety-four. Thomas Benton Carr of Medicine Lodge, Kansas, but bred to the law in southern Indiana while Walter Q. Gresham was at the bar, was unsurpassed as an agitator. He was the brains of "Sockless Jerry Simpson of Medicine Lodge," who in 1890 was elected to Congress by an overwhelming majority over his Republican opponent.

Another story Judge Caldwell told was that even Justice Harlan was influenced by Justice Brewer. But we have shown that the want of cordiality between Justice Harlan and Judge Gresham grew out of the Angle case. At first Justice Harlan approved the Wabash ruling, although it was opposed to his idea of central control.

In the Northern Pacific receivership, when Judge Hanford, the district judge in the State of Washington, with the Wabash ruling as a precedent, raised some questions as to the propriety of certain orders which Judge Jenkins, who had appointed the receivers at Milwaukee, was entering,

Judge Caldwell said to the attorneys, eminent in their line, who were conducting the case, "If you can get Judge Harlan to intervene you can get a modification of that Wabash case." At first Justice Harlan, so the attorneys said, refused to have anything to do with the matter. Finally he did so at Washington. Armed with a letter from Justice Harlan, the attorneys went to Seattle, and with that letter and good dinners, Judge Hanford was prevailed on to abandon his efforts to run the Pacific end of the Northern Pacific receiverships; and the good dinners and goodfellowship, one of the counsel engaged said he believed were more potent than Justice Harlan's letter. Subsequently Judge Hanford resigned in the face of impeachment proceedings.

Further complications arising in the Northern Pacific receivership because of the Wabash precedent, a case was made up for four of the Supreme Court justices—Field, Harlan, Brewer, and Brown—to pass on the circuit. The hearing was had, but there was not that modification of the Wabash ruling that was hoped for and desired.<sup>1</sup>

There are many things that even unanimous consent of counsel and parties is insufficient to authorize a judge to do. May 18, 1889, Walter Q. Gresham, on his own motion, appointed Volney T. Malott receiver of the Chicago & Atlantic Railroad Company. Another—a railroad man—had previously been decided on by counsel and parties, including J. Pierpont Morgan & Co., for this receivership.

This Chicago & Atlantic case we have adverted to before because it dovetailed into the Wabash case.<sup>2</sup> The Chicago & Atlantic Company had built, in the interests of the Erie Company, the railroad from Marion, Ohio, to Chicago, 270 miles, as the western extension of the Erie. But the money to build it had been furnished by citizens of Holland on the guaranty of the Erie Company that the Chicago &

<sup>1</sup>Farmers' Loan & Trust Company vs. The Northern Pacific Railroad Company, 72 Fed. Rep. 26.

<sup>2</sup>See page 551.

Atlantic Company would promptly pay the interest on this loan. For the first eighteen months after the road was opened for traffic in 1883, failing to earn operating expenses and interest, the Erie Company advanced the interest; then dissensions arose, and the Erie Company refused longer to advance the interest—said its contract of guaranty was *ultra vires*. It then caused a bill to be filed for the appointment of a receiver for the Chicago & Atlantic Company, and asked for a foreclosure of the mortgage on account of the interest it had paid.

At first the Holland bondholders, by Alexander & Green, opposed the appointment of a receiver. They were then opposing the Erie Company's attempt to get possession of the railroad. They represented to the court that the Chicago & Atlantic Railroad was in splendid physical condition; that they had advanced their money on the faith of the promise of the Erie Company that it would pay their interest; and rather than that the Erie Company, having defaulted in its promise, should get possession of their property, they were willing to defer their interest. Meanwhile, they said, let the Chicago & Atlantic Company continue to operate the road. Ever considerate of the wishes of the real owners of property, Judge Gresham refused, on this showing, to appoint a receiver when the Erie Company was the moving party. Three years later, after a decree of foreclosure in which the validity of the Hollanders' mortgage had been upheld, pending an appeal to the Supreme Court in which the validity of the Hollanders' mortgage was still questioned, and after the Hollanders and the Erie Company had settled their differences and united in a motion for a receiver, Mr. Malott was appointed. Mr. Malott was a practical railroad man of long experience. Judge Howell E. Jackson of the Sixth Circuit promptly confirmed the Malott appointment as to that part of the road in Ohio that was within his jurisdiction. Suspecting that perhaps the road had not been maintained as it should have been in

the interim, Judge Gresham instructed Mr. Malott, immediately on his appointment, to look to the physical condition of the road, and meanwhile take all temporary precautions against accidents that might result in injury to employees and the traveling public.

Within thirty days Mr. Malott presented a written report to Judge Gresham in which he set forth that the Chicago & Atlantic Railroad was in a dilapidated condition — rails, ties, fish-plates, angle-bars, and bridges. A piece of a rotten bridge timber was brought along as an exhibit.

Chief Justice Fuller was then in Chicago. Judge Jackson was written to, and asked to come to Chicago and sit with the Chief Justice and Judge Gresham and consider this report.

The report was considered in chambers by the three judges and the receiver without any one else present. Mr. Malott was asked how much it would take to make the road safe for the operation of trains. His answer was, "\$350,000." Accordingly, with the approval of his associates, Judge Gresham, on June 20, drafted an order that the receiver be authorized to borrow \$350,000 and secure its payment by receiver's certificates that should be a lien on the road superior to the lien of the mortgages, and unless the bondholders and the Erie Company consented to the issuance of these receiver's certificates, that on or before August 1, 1889, the operation of trains over the road should be abandoned. Mr. Malott had stated he could readily get the money. He at that time was president of one of the best National banks in the country.

Accordingly Receiver Malott and Edward Daniels, his counsel, proceeded to New York and assembled J. Pierpont Morgan, whose firm was reorganizing the Chicago & Atlantic Company and was then the fiscal agent of the Erie Company, Turner, Lee, & McClure, attorneys for the Farmers' Loan & Trust Company, and the trustees in the first and second mortgages of the Chicago & Atlantic



Company; Alexander & Green, the counsel of the first mortgage bondholders or the Hollanders; Charles W. Fairbanks, representing George J. Bippus, one of the trustees of the second mortgage; John King, the president, and Benjamin H. Bristow, the counsel of the Erie Company. To the assembly Mr. Malott exhibited and explained the order of the court. All were surprised, but none except J. Pierpont Morgan showed resentment. Through Justice Field of the Supreme Court, the few second mortgage bondholders, who were prosecuting the appeal to the Supreme Court in which the validity of the first mortgage was questioned, had been prevailed on to come into Mr. Morgan's plan of reorganization and to dismiss their appeal. C. W. Fairbanks, the counsel for these appealing bondholders, was very indignant at Justice Field for ending his lawsuit. But Mr. Morgan was the most indignant of all, for the order of June 20, 1889, upset all his plans for the reorganization of the Chicago & Atlantic Company. He said, "The money cannot be raised on receiver's certificates. I will discredit them everywhere." Mr. Malott said, "Gentlemen, I do not ask you to raise the money. I will attend to that." The consent was given.

As there had been no diversion of earnings from operating expenses, there was a reasonable doubt if the Supreme Court would have sustained the issuance of the certificates in this case without the consent of the bondholders. But to mandate a circuit judge to operate a railroad while unsafe to the employees and traveling public, was going farther than it was believed it would then have gone.

Mr. Malott so increased the business of the Chicago & Atlantic Railroad — for he was a practical railroad man as well as a banker — that out of the earnings of the road he was able to make it safe and did not have to sell a single one of the authorized certificates.

## CHAPTER XL

### THE SHERMAN ACT AND McKINLEY BILL

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THE SHERMAN ANTI-TRUST ACT—THE CASE OF RICHARDSON *vs.* ALGER—THE SHERMAN SILVER BILL—THE MCKINLEY BILL—THE WHISKEY TRUST—THE “INFERNAL MACHINE” PLOT—WHY THE PROSECUTION OF THE WHISKEY TRUST FAILED—THE SUGAR TRUST CASE—OTHER PROSECUTIONS.

THE Republican members of the Congress that assembled in December, 1889, selected Thomas B. Reed Speaker over William McKinley. Speaker Reed appointed Mr. McKinley Chairman of the Ways and Means Committee, and hence the tariff act that passed that Congress received the name “McKinley Bill.”

But long before the McKinley Bill had even passed the House, Senator Sherman had put his Anti-Trust Act of July 2, 1890, through both Houses. When he signed it, President Harrison remarked: “John Sherman has fixed General Alger.” The allusion was to Frank Hatton’s complaint that General Alger had purchased certain delegates in the Chicago convention of the year before.

Walter Q. Gresham never believed that John Sherman, in his public conduct, was influenced by his passions or his resentments. But whatever the motive, Senator Sherman<sup>1</sup> was prompt to act. In the Congress that assembled in December, 1888, he introduced his bill, as he said, to carry out the anti-trust plank of the Republican platform of that year.

A lawsuit at Detroit, David M. Richardson *vs.* Russell A. Alger and Christian A. Buhl, disclosed whence came the lavish expenditures that General Alger had made as a Presidential candidate. In justifying the increase of the capital

<sup>1</sup>See page 620.

account of the Diamond Match Trust, General Alger testified that during the years 1881 and 1882, to keep men out of the match business, large sums were expended in buying machinery and patents and match factories which were dismantled. The money thus expended enabled the trust to keep up prices and pay large dividends. The decision of the lower court, the Circuit Court of Wayne County, Michigan, on the chancery side was satisfactory to neither party, and both wanted the controversy decided by the Supreme Court of Michigan. But that court (77 Mich. 271), invoking the rule that "a court of conscience would not countenance an immoral contract"—"a contract in furtherance of a scheme to restrain trade"—of its own motion "turned both parties out of court" without deciding the controversy. And then as a warning to the legislative and executive branches of the government, State and National, it said if such combinations as the Diamond Match Trust were allowed to exist, it would not be long until they overwhelmed all popular government.

Michigan lawyers, Grand Army men, among whom General Alger was prominent, were frequent visitors while we lived at the Palmer House, and at our Prairie Avenue home, in Chicago. Some were friends of General Alger, some not. Some repeated in private what Joseph Medill had said in his paper about General Alger. It was from one of these that Senator Sherman got his specific information about the case of *Richardson vs. Alger*. It was November 15, 1889, that the Michigan Supreme Court handed down its decision, or more properly, its philippic. Senator Sherman followed it up by reintroducing his Anti-Trust act when Congress met December 6, 1889. The attorneys for the trust were there to draw, as they did, the match schedule in the McKinley Act, and later also in the Dingley Bill.<sup>1</sup>

Having had trouble in New York, the Diamond Match

<sup>1</sup>At the time of the Dingley Bill, Edwin Walker had become the attorney of the Diamond Match Company, and he it was who wrote the match schedule of the Act.

Trust organized February 13, 1889, as a corporation under the laws of Illinois. One of our neighbors was making enormous amounts of money out of the Diamond Match Company of Illinois. It was a small organization compared to the Standard Oil and the Sugar Trusts, but it was a lusty infant. Our friend urged me to buy some of the Diamond Match stock. "It is now a corporation and has a recognized legal status." The absurdity of the proposition that a State could grant a charter to a corporation to do what the State itself could not do, namely, regulate trade and commerce between the States or nullify or defeat an act of Congress, was pointed out by my husband so clearly and vehemently that even a woman, educated as I had been, "in the field," who had seen "the war legislate," and had heard lawyers and judges talk for years, could see the point. And yet eminent lawyers and the most of the American bar said that when the Standard Oil Trust organized as a corporation under the laws of the State of New Jersey, it was immune from attack by the National government.

The Diamond Match Company possessed patents that made it a monopoly without the aid of any tariff.

What little money my Irish uncle had left me I kept in real estate. Once I did lose a few hundred dollars on the Board of Trade, and the broker said I was a good loser. He and I alone knew of the transaction, which was buying wheat on margin. Women speculate, but it is on the long side. A woman never sells "short,"—that is, she doesn't figure prices are going down. For a public man in Washington to say he did not know and would not know how to operate or speculate on the stock or grain market removes the last doubt that I have as to my right and duty to tell my story. Because men will gamble in the guise of buying and selling for future delivery is no reason for abolishing the latter, or the boards of trade and public marts through which it is conducted. Every person who plants a crop is a speculator, but not a gambler.

Men and women, rich and poor, black and white, came to Walter Q. Gresham for counsel and advice. "Old Hutch" (B. P. Hutchinson), one of the great Board of Trade speculators or gamblers, if you please, was a native of Lynn, Massachusetts. He was one of the early pork packers of Chicago and almost always a money-maker. He carried big bank balances. It was not to get credit but to help his friends that he organized the Corn Exchange National Bank. When it was put up to him that he must sign as president every note the bank issued, he said, "I have no time for that," and resigned. Many hours have I listened to B. P. Hutchinson and Mr. Gresham talking. Carrying a big load or "line," stimulants failing to relieve the tension, the old man would seek my husband. Sometimes he would indicate he did not want me present. Then I would retire. The information that Judge Gresham acquired from such an encyclopedia of statistics and facts as was "Old Hutch" was large. Sympathy and good advice helped to restrain "Old Hutch's" gambling propensities, and he died a rich man.

Sometimes brokers would send checks to my husband and say it was his share of a certain speculation in stocks that a certain gentleman or gentlemen had carried on for his account. Promptly the checks would be returned with the statement: "The venture was not authorized by me; neither my money nor my credit entered into the purchase and I can accept none of the proceeds."

The Sherman Anti-Trust Bill, as originally introduced in December, 1888, and as reintroduced in December, 1889, provided that any person, firm, or corporation receiving any benefit under any tariff law, that became a party to any combination to forestall or stifle competition as prohibited by any State statute or the Sherman Act, would be subject to the pains and penalties of the Sherman Law. From the foundation of the government the argument in favor of a high tariff had been that the manufacturers

would compete amongst themselves and thus lower prices. But instead of doing this, inside the Chinese wall the war legislation had constructed, they were combining in the form of trusts to keep up prices.

Senator Sherman well understood the confines of State and Federal jurisdiction. Why could not Congress pass a law that would prevent the perversion of the benefits conferred on a manufacturer by a fostering law of Congress? Walter Q. Gresham believed with Senator Sherman that it could constitutionally do so.

The tariff barons and their lawyers said such legislation would be unconstitutional. Congress has no power to interfere with manufacturing *per se*. Certainly not. But if the manufacturer comes to Congress for protection, Congress should see that that manufacturer does not abuse that protection. According to Judge Gresham's way of thinking, any perversion of the benefits derived under a Federal statute would present a Federal question because it would be a controversy arising under the laws of the United States, and therefore the Federal courts would have jurisdiction. But the best way to restrain the combines was to limit the customs duties so that the trust could not, because of foreign competition, become so great as to be a menace to the government and to society.

The theory prevailed that Mr. Sherman's draft of the bill was unconstitutional, so Senators Hoar and Edmunds of the Judiciary Committee, it is said, rewrote the bill under the commerce clause of the Constitution, clearly covering by its terms a trust or combination incorporated under the laws of the States; as, for instance, the Diamond Match Company of Illinois.

Without the actual experience in the courtroom as lawyers that Senators Edmunds and Hoar possessed, Senator Sherman was the superior of both and of all others of that time in long service and in practical administrative and legislative experience. He could see through a millstone, if

there was a hole in it. He promptly accepted the amended bill and drove it through Congress. It was not an administrative measure, it was not a party measure. The trusts, the combines, and the men who were rewriting the schedules of the McKinley Bill, did not want it.

Senator Hoar said the amended bill did not prohibit reasonable restraint of trade. After it was found that it did—and some men of practical experience say there is no such thing as “reasonable restraint of trade”—several attempts were made to induce Congress to amend the act by writing in it the word “reasonable.” It was to get from under the doctrine of “reasonable restraint of trade” that led the American colonists to break with the British king. “Reasonable restraint of trade” is a common law doctrine pure and simple. There is no common law of the United States.<sup>1</sup> Failing to induce Congress to amend the act, the Supreme Court of the United States in the Standard Oil case was led to interpret the act as if the word “reasonable” was in it, although Justice Harlan in a dissenting opinion warned them it was legislation pure and simple.<sup>2</sup> And yet people marvel that the proposition of the judicial recall has been advanced. One of William H. Taft’s mistakes as President was to defend the opinion of the court in the Standard Oil case. But as a judge he was among the first, if not the first, to interpret the act as it was written.

But coming back to the McKinley Bill, to which the Sherman Act was such an undesirable supplement. The former did not get through the House of Representatives until late in the Summer of 1890. With it there went to the Senate a “Force Bill.” This Force Bill was an administration, President Harrison’s, measure designed to secure the ballot to the negro in the South. But the practical men in the Republican party, led by Senator Quay, were not behind it, and its fate shows that General Harrison’s fears as a candidate that he would not have much

<sup>1</sup> Wheton vs. Peters, 8 Peters 591, p. 653.    <sup>2</sup> 221 U. S. 91, 105.

influence at Washington as President were well grounded. The Senate was Republican by a scant majority. In order to defeat the Force Bill, the Southern senators threatened to filibuster to the end of the session before they would let any legislation pass. To meet this situation, Senator Quay agreed with Senator Vest of Missouri that if the Democrats would allow a vote on the McKinley Bill, Quay would cause enough Republican votes to be cast against the Force Bill to defeat it.<sup>1</sup> The Force Bill was defeated. And then before the vote on the McKinley Bill, Senator Wolcott of Colorado, with Senator Teller steering him, served notice that the silver interests of Colorado were entitled to as much consideration as the iron interests of Pennsylvania, and unless provisions were made for the former, the Senators from Colorado and the other silver States would vote against the McKinley Bill.

Promptly John Sherman's Silver Bill, to coin 6,000,000 ounces of silver bullion into dollars at the ratio of 16 to 1 of gold, while the commercial ratio was almost 32 to 1, was passed with the McKinley Bill. Its practical operation satisfied neither the silver nor the sound money men. To the latter class President Harrison belonged. And yet, when the inevitable effect was presented to him of issuing bonds to buy gold to protect the gold reserve in the Treasury, he refused. A subsequent chapter will show how President Cleveland met the emergency after V. T. Malott, the Indianapolis banker, pointed out the way.

When President Harrison signed the McKinley Bill on October 9, 1890, he stated to Major McKinley, "This defeats us." Soon after, at a dinner in honor of General Miles's assuming command of the Department of the Lakes, Walter Q. Gresham declared the McKinley Bill a departure from the policy of Henry Clay.

Major McKinley, in the November election of 1890, was himself in his own congressional district overwhelmingly defeated, and his party with him. We have shown in the

<sup>1</sup> See page 812



preceding chapter how, on the judicial side, there were contributing causes. Kansas, Nebraska, and other Western States were carried by the Populist party by immense majorities.

Lawyer that he was, and a good one, President Harrison was lacking in executive ability and leadership. When it came to legislation, he was entirely ignored. Speaking by the record, the Harrison administration was not fortunate in its efforts to enforce, or in laying the foundation for the enforcement of the Sherman Act.

After the final vote on the McKinley Bill had been taken, Senator Sherman from his place in the Senate urged the beneficiaries of the bill not to combine for the suppression of competition and the enhancement of prices. But neither his advice nor his law was much heeded.

December 15, 1890, the *Chicago Tribune* reported one of the promoters of the Barbed Wire Trust, which subsequently became one of the subsidiary trusts or corporations of the United States Steel Trust or Corporation, as saying: "There is no use lying; we are here [in Chicago] to form a *Wire Trust* and raise the price one cent a pound. That is what we propose doing."

The first prosecution under the Sherman Act was that against the "Whiskey Trust." William H. H. Miller, one of President Harrison's law partners, was still Attorney-General and William Howard Taft Solicitor-General.

The "Distillers and Cattle Feeders Trust" was created by an agreement in writing dated May 10, 1887. Prior to that time it had had more than a nebulous existence, for there had been an oral understanding. It was modeled after the Standard Oil Trust. Its control was vested in a board of trustees. Five different corporations owning and operating distilleries in and about Peoria, Illinois, became its first members. By May 10, 1888, it had absorbed eighty-one different distillery corporations and firms operating distilleries from Maine to California. Many of these distilleries had been closed down. All over the country

similar organizations in almost all lines of manufacturing were being formed. But so far as disclosed, the Whiskey Trust was the only combination—although they all resorted to unfair methods—that used dynamite to bring a recalcitrant into the fold.

February 11, 1890, in order to clothe the unlawful combination in legal garb, the trustees of the Distillers and Cattle Feeders Trust organized under the laws of Illinois the Distilling and Cattle Feeding Company.

That eminent counsel, the leaders of the American bar, could obtain judicial sanction for the proposition that a charter from a State was a license to violate a Federal statute, accounts in part for the loss of confidence the American people have manifested in the American bench and bar. Behind that New Jersey charter the Standard Oil stood for years after it had been run out of Ohio. At the time of which I am writing there were Standard Oil people in society in Chicago. The status of that organization, the personnel of many of its members, was well understood. Joseph Medill did not print in his newspaper everything he knew, although he had much to say about "The Trusts."

"In November, 1890, the Treasury Department became satisfied something was wrong at Chicago." That was the way Solicitor of the Treasury Hart, three months later, began his story to the newspapers. But the most interesting part, the real history of those extraordinary events, the newspapers never published. Mr. Hart was one of the men I met when my husband was Postmaster-General and later when Secretary of the Treasury. He was a member of Congress. I knew Mrs. Hart well, and her daughter, a charming girl, was a friend of my daughter. Mr. Hart had been lieutenant-governor of Ohio, and was practising his profession at Hillsboro, Ohio, when he was made Solicitor of the Treasury.

According to Solicitor Hart's statements to the newspapers, the Whiskey Trust had attempted to dictate the

Illinois appointment in the United States Internal Revenue Service, but had failed. But in confidence, Solicitor of the Treasury Hart disclosed to Circuit Judge Gresham that the Trust had "put it over" on the administration. The first man Mr. Hart called on when he came to Chicago was Judge Gresham. The authorities at Washington suspected everybody in the Internal Revenue Service in Illinois, and almost everybody connected with the administration of justice. Solicitor Hart was specific in saying they did not trust Collector of Internal Revenue "Chris" Mamer and United States Marshal Hitchcock, both of whom President Harrison had appointed.

The Judge tried to convince the Solicitor that both Mamer and Hitchcock were honest men and could be relied on to perform any duty that might be imposed on them. The Judge showed his confidence in United States District Attorney Thomas E. Milchrist, another appointee, by taking Solicitor Hart to the district attorney's office and introducing Mr. Hart to Mr. Milchrist. He explained to the latter the difficulty the Solicitor of the Treasury seemed to think he was in. Mr. Milchrist was positive both Mamer and Hitchcock could be relied on.

Solicitor Hart returned to Washington and came back to Chicago. Still they would not trust Mamer and Hitchcock. "Hitchcock had one time been sheriff of Peoria County, the headquarters of the Trust." "But as sheriff of Peoria County he had been a terror to wrongdoers." Still the Solicitor of the Treasury was obdurate. "Well," said the Judge, "there is Captain James E. Stewart, the chief post-office inspector in charge of this district. I have known him for years. He handled many cases for the government when I was on the district bench at Indianapolis. He was one of the inspectors when I was post-master-general upon whom I relied in my war against the Louisiana Lottery. You can trust him."

Captain Stewart had graduated from a Wisconsin

regiment in 1865 into the postal service. In 1919 he still is the inspector in charge of the Chicago Division, composed of Illinois, Michigan, and Wisconsin. Possibly by some the criticism may be made of Judge Gresham in this instance that some Federal judges would have declined to interfere. But certain it is Judge Gresham rendered the administration in this matter all the aid any partisan could demand.

Solicitor Hart returned to Washington. In due time an order came from Postmaster-General Wanamaker to Post-Office Inspector Stewart to take charge of the investigation of the violation of the internal revenue laws in Illinois.

John Dewar had been a gauger under President Arthur's administration. When the first Cleveland administration came in, in 1885, Dewar made way for a good Democrat, and then Dewar went to work for the Whiskey Trust. In July, 1890, Dewar got his place back as a gauger under President Harrison's administration, and was assigned to the Shufeldt Distillery. Early in December of that year Dewar received a letter from George J. Gibson, secretary of the Distilling and Cattle Feeding Company at Peoria, stating that he wanted to see Dewar about a mistake that had been made in his last voucher as an employee of the Distilling and Cattle Feeding Company. When Dewar called on Gibson at Peoria, the latter opened up a proposition for Dewar to blow up the Shufeldt Distillery. Since the explosion on December 10, 1888,<sup>1</sup> Shufeldt and Lynch had maintained a strong guard day and night at the Shufeldt Distillery, and only employees and United States Internal Revenue officers could enter its doors. Meanwhile, the Shufeldt was the one great competitor of the Trust. Terms were agreed on—\$25,000—whereby Dewar was to use the apparatus which Gibson furnished to destroy the distillery.

The infernal machine consisted of a tin can in which was a certain liquid, oakum, and a sawed-off Belgian rifle loaded with powder and a cone-shaped bullet designed to pierce

<sup>1</sup> See page 620.

the bottom of the center vat in the distillery. The piercing of the bottom of the vat would release enough combustible and explosive liquid, coming in contact with the burning cotton and oakum in the air, to complete the destruction of the distillery.

But Dewar became conscience-stricken and made a disclosure or confession of the scheme to Special Agent Summerville of the Internal Revenue Department, who reported to Commissioner Mason, and he in turn to the Secretary of the Treasury. It became the subject of a cabinet conference, and Solicitor Hart went to Chicago.

Early in February, 1891, at a conference of United States District Attorney Milchrist, Special Agent Summerville, and Inspector Stewart, it was arranged that Stewart should get the evidence against Gibson, including, if possible, some of Gibson's handwriting to compare with Gibson's letter to Dewar.

A letter was dictated by Stewart for Dewar to copy, and then Stewart mailed it to Gibson at Peoria. In speaking of this letter, Stewart said Judge Gresham had early cautioned him in detecting crime, never, as an officer of the government, to advise the commission of a crime, and never to take a position that would compromise him before a jury. The letter was to the effect that Dewar's work had taken him away from the Shufeldt Distillery; that he was now back; that he was afraid the liquid had lost its strength, and he awaited Gibson's further instructions. In this letter a code message was prepared so that Gibson could wire Dewar what he, Gibson, proposed to do. The night of February 8, the letter to Gibson and Inspector Stewart went to Peoria. Stewart was in Gibson's office before the letter arrived. The inspector was investigating complaints about the failure of carriers to deliver the mails promptly. "We have no complaint to make. Our service is satisfactory," Mr. Gibson said. "Would the secretary of the Distilling and Cattle Feeding Company favor the government of the

United States with a statement to that effect?" "Certainly," replied Gibson. While Gibson was writing out his statement, Stewart saw a clerk lay Dewar's letter to Gibson, which Stewart had mailed the night before in Chicago, on Gibson's table. Gibson read his tribute to the efficiency of the United States postal service and said, "Wait a minute and I will have it typewritten."

"Not necessary at all; just sign it and I will take no more of your time."

Gibson signed the paper, and handed it to Stewart, who said, "Glad we are giving you such good service. Good-bye."

Stewart sauntered into other places, but watched. Soon Gibson appeared and went to the office of the Monarch, one of the Trust distilleries; thence to a drug store, where he spent some time in the rear of the store. Stewart returned to the hotel at which he was stopping and where Gibson lived. Taking a block of blank telegrams lying on the customers' counter of the hotel telegraph office, Stewart turned over the first sheet and wrote on its back his initials, "J. E. S.," and then laid the block back on the counter. Presently Gibson entered the hotel, went upstairs, came down to the telegraph office, and sent a telegram. Then Stewart took the first train back to Chicago. Of course, the telegram beat him there. It advised Dewar to meet Gibson at the Grand Pacific Hotel the next morning, February 10, 1891. When the Western Union Company produced the original before the Federal and State Grand Juries, it was in the same handwriting as the letter Gibson had written for Stewart, and on its back was "J. E. S."

At 6:30 A. M., Dewar met Gibson in front of the Grand Pacific Hotel, and as they came into the entrance, Post-Office Inspector Stewart and two United States marshals took Gibson into custody and to the United States Marshal's office in the Federal Building. From the hotel to

the Marshal's office Stewart insisted that Gibson carry his satchel, in order that in any prosecution that might follow, the defense could not claim the government officers had slipped anything into the satchel. Opening the satchel in the presence of several deputy marshals, it was found to contain a bottle filled with liquid and a large number of bonds which could readily be turned into currency.

Later in the day, Special Agent Summerville, acting under instructions from Solicitor Hart, filed an affidavit before United States Commissioner Philip A. Hoyne in which it was charged that on January 25, 1891, George J. Gibson had offered Dewar \$25,000 to do and omit to do certain acts in violation of his lawful duty as a gauger.

In the chapter on the Whiskey Ring of 1875, we have shown that Judge Gresham, who was then the United States district judge for the District of Indiana, construed the revenue laws so as to catch all the revenue officers who were derelict in their duty to the government. Judge Blodgett, before whom the government had succeeded against the Whiskey Ring of 1875, in the district court for the Northern District of Illinois, was still the judge presiding in that court and the court in which, under Solicitor Hart's theory, the prosecution must be begun.

But from here on it must be kept in mind that the Federal statute did not prohibit, with penalties, the gauger from committing arson or murder. The acts the Federal statute prohibited were failure to observe the exact quantity of spirits produced, running the distillery in the absence of a government officer, and similar acts which would defraud the government of its revenues.

Gibson waived an examination before Commissioner Hoyne, was bound over to the United States Grand Jury and released upon Nelson Morris, one of the directors of the Distilling and Cattle Feeding Company, becoming his surety on a bond in the penalty of \$20,000.

February 28, 1891, three indictments were returned in

the Criminal Court of Cook County against George J. Gibson, one in eight counts for conspiring to commit murder, one in four counts for an attempt to commit arson, and one in twenty-two counts for "feloniously" procuring gunpowder for the purpose of unlawfully destroying life and property. Post-Office Inspector Stewart and the other United States officers were named on the back of the indictment as the witnesses who had been before the Cook County Grand Jury.

April 20, 1891, Solicitor Hart still insisting, the United States Grand Jury voted an indictment against Gibson for attempting to bribe an officer of the United States.

After Thomas E. Milchrist was appointed United States district attorney for the Northern District of Illinois, he appointed John P. Hand, afterwards a member of the Supreme Court of Illinois, his first assistant, and insisted on retaining Oliver E. Pagin, who had come into the office a Democrat five years before. Pagin was then an expert in drafting indictments, complying with all the technical and unreasonable rules of the common law courts. Never, it is said, was an indictment drawn by Pagin insufficient in form. He is still in the employ of the Department of Justice and is to-day the best authority in the United States on indictments.

At Solicitor Hart's instance, District Attorney Milchrist, accompanied by Mr. Hart, promptly took the indictment to Judge Gresham and by them it was carefully examined. Although in the nicest technical form, the Judge was of the opinion that the offense charged—the attempt to bribe Dewar to blow up the Shufeldt Distillery—was not an offense against the Federal statute. Hart took a copy of the indictment and went to Washington. Subsequently Solicitor-General Taft wrote District Attorney Milchrist that he concurred in Judge Gresham's view.

Still Hart was not satisfied. He and Milchrist and Hand argued out before Judge Blodgett the motion to



quash that John S. Runnells and William Burry, Gibson's lawyers, had made. Mr. Runnells was then the general counsel for the Pullman Company, and one of the best lawyers of his time, and his associate, Mr. Burry, as the saying is, was coming along. June 6, 1891, Judge Blodgett quashed the indictment.

The officers of the Whiskey Trust wanted to go to trial in the State Court and acquit Gibson, as a vindication of the Distilling and Cattle Feeding Company. To this end they offered Stewart \$100,000 if, as a witness, he would testify that after Gibson was arrested at the Grand Pacific Hotel an officer took the satchel from him. This would admit of the defense that the explosive material was put in the satchel by some one other than Gibson. But Stewart was obdurate. After several continuances and all pretense over delay had been exhausted, as a trial approached Gibson "fled the realm." He went to Cuba and died there. This Gibson incident is said to have cost the "Trust" \$290,000.<sup>1</sup>

Of course, the arrest of Gibson was given wide publicity in the newspapers. Almost everybody was interviewed. Solicitor Hart said: "He, Shufeldt, is making money, while the Trust, with \$35,000,000, with big salaries and carrying dead plants in its capital account and other expenses, is losing. The Trust might easily put up the price of spirits, but cannot do so as long as the Shufeldt holds out, and it would be a mighty good thing for the Trust if the Shufeldt is out of the way."

Thomas Lynch said: "How such an organization as the 'Trust' is allowed to exist, I cannot understand. It has issued \$35,000,000 of certificates, and I can prove that it is not in possession of more than \$4,000,000 worth of property.

<sup>1</sup>April 9, 1895, John McNulta, Receiver of the Distilling and Cattle Feeding Company, brought suit in the United States Circuit Court at Chicago against J. B. Greenhut, Nelson Morris, Samuel Woolner, and the other directors of the Distilling & Cattle Feeding Company for \$290,000, the difference, after allowing for certain legal expenses, between \$1,685,000 actually paid November 14, 1892, for the Star and Crescent and the Nebraska Distilleries, and \$1,984,407.83, charged on the books as the purchase price of these distilleries. But the suit was not prosecuted. May 7, 1895, it was dismissed.

We have all the orders we can handle. Ours is the largest distillery out of the Trust."

Henry H. Shufeldt said: "The arrest of Gibson was a complete surprise to me. We have fought the 'Trust' right along and do not mean to quit now."

But May 1, 1891, Shufeldt and Lynch sold the Shufeldt Distillery to the Trust at a good price. The purchase was made through Lyman J. Gage, the president of the First National Bank of Chicago, subsequently the Secretary of the Treasury under President McKinley. Judge Gresham, several years before this, had made some powerful enemies when he said from the bench that he did not believe certain statements Mr. Gage had made as a witness in open court under oath. Nelson Morris, one of the directors in the Trust, was also a director in Mr. Gage's bank. The trade and the world at large soon knew of the purchase by the Trust of the Shufeldt Distillery.

Because Walter Q. Gresham did not believe that "the fathers" contemplated every crime by judicial construction should be drawn into the Federal courts, or, in other words, was able to maintain before all comers the proposition that "*while the war legislated*" it did not destroy the States or local self-government, Benjamin Harrison and William H. H. Miller knew that of all men Judge Gresham was for maintaining all the legitimate and constitutional powers of the National government. They complained that as a Federal judge he went too far in upholding these powers, and there was judicial warrant for their complaints. They said he ought not to push old soldiers to the wall. And they knew that for a time he forfeited General Grant's friendship when the General's confidence was abused by bad and designing men.

Manifestly there was an offense against the Sherman Act. By all the rules for the practical enforcement of the law, the place to have begun the prosecution of the Whiskey Trust under the Sherman Act was in the district and circuit

courts of the United States for the Northern District of Illinois. Within that district were both Peoria and Chicago. At Peoria were all the archives of the combination and there it had its inception.

But instead of beginning the prosecution against the Whiskey Trust in Illinois, under the Sherman Act, the government of the United States went way down to Boston, and there, March 23, 1891, procured indictments against Joseph B. Greenhut of Peoria, Illinois; Louis H. Green of Cincinnati; Warren H. Corning and Julius French of Toledo, Ohio; Herbert L. Terrell of New York, and other officers and stockholders of the Distilling and Cattle Feeding Company of Illinois, none of whom resided in or were citizens of Massachusetts, or even New England. At once Elihu Root and Richard Olney, as attorneys for the defendants, denied the right of the government of the United States to remove a defendant from his home district to a foreign district for trial. In every instance was the government defeated. According to the opinion of Judge Ricks in the Northern Circuit and Judge Jackson in the Southern District of Ohio, and Judge Lacombe in New York, the indictments were not drawn with that technical care which the layman not unjustly thinks has become one of the reproaches of the legal profession. Circuit Judge Jackson, in an elaborate and forcible opinion which for years was pointed to by the combines as its protection, tore the Sherman Act to pieces and refused to enter an order for Green's removal to Boston for trial. Finally Judge Nelson, May 16, 1892, in Boston, before whom the indictments were returned, quashed them all (50 F. R. 469). In Judge Nelson's opinion occurred this sentence: "The indictment in this particular is clearly insufficient according to the elementary rules of criminal pleading, and charges no offense within the letter or spirit of the second section of the statute." It is due to Solicitor-General Taft to say he had no part in drafting this indictment.

On February 18, 1893, President Harrison sent Circuit Judge Jackson's name to the Senate as the successor of Justice Lamar, who died January 23, 1893. Think not that I am criticizing Judge Jackson's appointment. Long before Mr. Cleveland took him from the Senate and made him a circuit judge, he was one of the Southern men with whom, it was said, Walter Q. Gresham was on too intimate terms. On the circuit bench Judges Jackson and Gresham's relations were most cordial. We visited the Jacksons at West Mead, Tennessee, and they us in Chicago. Judge Jackson was one of the men, who, by word of mouth and letter, urged Judge Gresham "to do his duty" by publicly stating he would vote for Grover Cleveland. But how a President who really wanted the Sherman Act enforced could promote a judge, in every other respect able and capable, who had torn that law to tatters, is a mystery.

In open court the Harrison administration fared better at the hands of Judge Gresham than it did before almost any other circuit or district judge. In the celebrated Counselman case, to which we have referred before, the government, in upholding a great piece of remedial and constructive legislation, won, December 11, 1890, before Judge Gresham, and lost before the Supreme Court, January 11, 1892. Afterwards the Supreme Court, when confronted in a subsequent case with the consequences of its ruling in the Counselman case, took it back. On the bench passion and resentment never affected the judgment of Walter Q. Gresham.

I heard a discussion about one of the anti-trust cases that became historic—the Sugar Trust case. It was the first to get to the Supreme Court of the United States. It was at a family dinner at Secretary of the Treasury Carlisle's. Attorney-General Olney, my husband, and a few others were present. The Havemeyers, the heads of this trust, were then much in Washington and in Washington society. Their influence in legislation was great. They

had had a hand in drafting the McKinley Bill, and they were not without influence in framing the Wilson-Gorman Bill. Grover Cleveland knew them. They were in his mind when he denounced the "communism of pelf" in his famous letter to Representative Catchings of Mississippi. Night after night, as I shall subsequently show, I sat beside Grover Cleveland at State dinners. Aside from my husband, he talked to me with less reserve about men and measures than any man ever did. And there were the Sugar senators. Many times I have heard them named by Grover Cleveland. It will do no good for me to mention them here. Walter Q. Gresham denounced them most bitterly.

Senator Quay opposed the prosecution of the Sugar Trust from the start. What some senators did and denied, Quay did in the open. Surely he speculated in sugar stocks and voted for the sugar schedules as a means of raising revenue and for protection.

President Harrison was loath to go against the Sugar Trust. But March 4, 1892, the American Sugar Refining Company, a New Jersey corporation, purchased the four sugar refineries, situated in the city of Philadelphia, of the E. C. Knight Company, a Pennsylvania corporation, and the pressure became so great that the government was forced to proceed.

March 21, 1892, Charles H. Aldrich, a Chicago lawyer, able and learned in his profession, succeeded Mr. Taft as Solicitor-General. Meantime President Harrison appointed Mr. Taft one of the judges of the United States Circuit Court of Appeals for the Sixth Circuit, where he did his part in giving life and validity to the Sherman Act. Mr. Aldrich was sent to Philadelphia to examine the situation. He spent several days there. He returned to Washington and redrafted the bill that had been partially prepared, and on May 21 filed it in the United States Circuit Court at Philadelphia to enjoin the American Sugar Refining Company from completing the acquisition of the four

Philadelphia refineries of the Knight Company, and from restraining trade and commerce between the States. In addition, Mr. Aldrich wanted to proceed by way of indictment against the officers of the trust, but was not permitted to go that far.

All the evidence to support the government's case was prepared before Mr. Cleveland came in as President and Mr. Olney as his Attorney-General. Mr. Olney continued Emery P. Ingham, who had been appointed by President Harrison, and a Mr. Russell, the assistant district attorney, to try this "Sugar case." January 19, 1894, Ingham and Russell argued the case before Judge Butler. January 30, Judge Butler filed his opinion (60 Fed. R. 306), in which he held there was no evidence that there was any purpose to control trade and commerce, only to manufacture, and therefore he dismissed the case. March 26, 1894, the Circuit Court of Appeals affirmed Judge Butler (60 F. R. 934). This time Ingham alone argued the case for the government. But John F. Phillips, the old solicitor-general, and a fine lawyer, was on the brief with Mr. Ingham.

The case had been tried and lost before Judge Butler and the Court of Appeals at Philadelphia and was approaching argument in the Supreme Court when the dinner party mentioned above occurred. The case was argued October 24, 1896, by Lawrence Maxwell, the Solicitor-General and one of the able lawyers of his time, by Mr. Phillips for the government, and by John G. Johnson and John S. Parsons for the Sugar people. At the dinner party Attorney-General Olney stated the broad proposition that a mere combination of manufacturing was not in contravention of the Sherman Anti-Trust Act. My husband agreed with him, but said it would take a very little evidence, "a scintilla" outside of the acquisition of many manufacturing plants, to authorize the court to infer that the purpose was to control commerce or traffic; that is, buying and selling between the States.

"There was nothing in the proofs," said Chief Justice Fuller, in deciding the case, January 21, 1895, "to indicate any intention to put a restraint upon trade or commerce. A combination or a monopoly of manufacture is not under ban of the National government." Justice Harlan dissented from this opinion.

All the courts through which the case passed said that the bill, as Mr. Aldrich drew it, was good; that it charged a combination or monopoly to dominate and control the commerce between the States and not a combination simply of manufacturing. Mr. Aldrich said the evidence was prepared or gathered to prove that the Sugar Trust was a combination in restraint of trade. It turned out that District Attorney Ingham did not put in evidence on the trial before Judge Butler the testimony and the documents which proved that the purpose of the American Sugar Refining Company in acquiring the four refineries of the Knight Company was to buy and sell sugar to the citizens of the United States and therefore dominate trade and commerce between the States. Afterwards Ingham was indicted, tried, and convicted for being a party to a scheme to defraud the government by counterfeiting. The only explanation that seems to me reasonable is that Ingham had been reached by the officers of the American Sugar Refining Company, and that therefore Ingham did not introduce in evidence an essential part of the government's case. For later on the American Sugar Refining Company and many of its officers were convicted of inducing the customs officers to make false statements to the Treasury Department of the United States as to the quantity of raw sugar the company was importing, in order to cheat, as it did cheat, the government of the United States out of immense sums of revenue.

Had the Sherman Act been drawn as Senator Sherman originally intended, and enforced as finally written, there would probably have been no difficulty about reaching the first great combination that the government attempted to prosecute.

Only in the prosecutions begun against the Trans-Missouri Association, a combination of railroads in which the Harrison administration failed before Judge Rines, did the Cleveland administration succeed. Attorney General Harmon argued the case for the government, and the court reversed Judge Rines, holding that the Anti-Trust Act applied to railroads the same as to industrial combinations to control trade and commerce between the States. But up to that time it had not been enforced against industrial combinations, certainly not against the Whiskey and Sugar Trusts. In the debates in Congress the senators and representatives said they meant to reach the "Sugar Trust," the "Beef Trust," the "Oil Trust,"<sup>1</sup> the "Coal Trust," the "Whiskey Trust," and other combinations of capital and industry. The Supreme Court answered in the language of Senator Salisbury of Delaware of 1866. It is not what the Senator, Trumbull, means, that will control the construction of his amendment, the Thirteenth, to the Constitution of the United States,<sup>2</sup> but what is the proper conclusion to draw from the language he uses. The Anti-Trust Act was first enforced (54 Fed. Rep. 994, 57 Fed. Rep. 85) against labor men, longshoremen, on a strike at New Orleans.

<sup>1</sup> See page 811.

<sup>2</sup> See page 329.



## CHAPTER XLI

### JUDGE GRESHAM'S VIEWS ON POPULAR GOVERNMENT

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SPEECH AT THE DEDICATION OF THE GRANT MONUMENT,  
CHICAGO—POLITICS AND GOVERNMENT OF THE TIMES DE-  
NOUNCED—BANQUET OF THE SOCIETY OF THE ARMY OF THE  
TENNESSEE—NOTED SPEAKERS—PLAN TO DEFEAT HARRI-  
SON'S RENOMINATION—PEOPLE'S PARTY WANT GRESHAM AS  
A CANDIDATE FOR PRESIDENT—HE DECLINES.

SOON an occasion came when Judge Gresham was obliged to make his political views public. In Lincoln Park, Chicago, October 7, 1891, an equestrian statue of General Grant was to be dedicated under the auspices of the Society of the Army of the Tennessee, which was to hold its annual reunion October 6, 7, and 8. Mr. Gresham was chosen to make the address at the dedication.

Aside from the fact that his military services imposed a duty on him to speak, if it was fair criticism that the address was political in its effect, as it was intended it should be, it was less a political act than for the Supreme Court of the United States to amend an act of Congress by writing the word "reasonable" into the Sherman Act in the Standard Oil and Tobacco cases after Congress had expressly refused to make that amendment, and that, too, after Justice Harlan in his oral opinion in open court warned his brethren that the oral opinion of Chief Justice White as just delivered and subsequently reduced to writing was legislation pure and simple.

After what President Angell of the University of Michigan said was one of the best delineations of General Grant's

character that was ever made, after stating that brave and generous men will not censure the ex-Confederates for cherishing an affectionate regard for one another and for strewing flowers on the graves of their fallen comrades, he set forth his views on political matters in a way that he could not have done had he accepted the overtures of Platt and Quay in the Chicago Republican Convention of 1888.

It is a mistake to suppose that popular government is an art or a mystery. Some of the details of administration require special training and experience. But in its broad policies, in the adjustment of it to the ends for which it was organized, in the promotion of its purposes, men like Grant, who feel rightly and see clearly, who have a sound judgment, and saving common-sense, and who will resolutely assert themselves under all circumstances, may be safely trusted with its affairs and destinies. We need men possessing these qualities to resist the aggressions of those who seek to make of our politics both an art and a mystery, intelligible only to the adept and initiated, who assume the management of them by virtue of their capacity for the deft and artful manipulation of their fellows. Their influence upon the country is corrupt and debasing, and the area of political venality constantly enlarges under it. According to their views the whole interest that any citizen has in Municipal, State, or National Government is measured by what he can make out of it. It is worse than idle to shut our eyes to the existence of corrupt methods and practices in our politics which threaten to subvert our free institutions.

The man who accepts a bribe of any sort places his conscience and judgment in the vilest bondage. He is no longer free. Argument is wasted on him. Considerations of the public weal or woe do not affect him. Bayonets at the polls would not control his conduct more effectively. And men who contribute money to buy votes and to bribe the people's representatives, as well as those who disburse it, are deadly enemies of the republic. They may masquerade in the garb of righteousness, but their virtues are assumed; they are hypocrites and assassins of liberty, and would welcome a dynasty rather than shed their blood in defense of popular government.

Let us not be deceived by mere forms. Radical changes in government may be effected without perceptible change in the mode of administration. Some of the worst tyrannies the world has ever known were maintained under popular forms.

Engrossed in the cares of business and laborious occupations, men seem inattentive to the requirements of citizenship, but they do not consciously and willfully shirk its duties and responsibilities when they are clearly and fully understood. They may be slow to act, but when danger becomes imminent they will assert themselves again as they have in the past. The sentiment of patriotism is still strong in the people. Its voice may be unheeded for a season, and may be drowned by the noisier tongues of greed and selfishness, but it will be heard again. It patiently submits to many affronts, and quietly endures many indignities. But in its temporary silence it gathers an accumulation of energy, and when the limit of endurance has been reached, its commanding voice breaks forth on the startled air, trumpet-tongued, and against its mighty tones no other voice dares lift itself.

Our Republic was founded in the patriotism of the people, and their love of country was strengthened by the struggle for its defense against foreign aggression. The Revolutionary War was a test of the popular patriotism which had been previously implanted, rather than a development of it. The patriotism which was ablaze in the speeches of Otis and Adams and Henry, and in the intrepid conduct of Warren and Marion, was a steady and fervent heat in the bosoms of thousands whose names are unknown to history. As a people we have inherited the patriotism of our Revolutionary sires, and the inheritance has not been squandered nor dissipated.

The vast majority of the people are patriotic and sound to the core. In them is our mainstay and chief dependence. Our confidence in their steady and unfaltering love of country, which is indifferent about any show of itself and speaks only in its acts, will never be misplaced. It was this sort of patriotism that was personified in Grant.

The newspapers gave this speech wide publicity, both in their news columns and in editorial comment. Although Joseph Medill never abated his friendship for Mr. Gresham,

he thought "the Judge went it a little strong." But he did not criticize. As a sample of the newspaper comment—and it was almost universally favorable—Morris Ross in the Indianapolis *News* said the conditions of the times demanded that some one speak out, and that the Judge "bit nigh." One of the most flattering comments was by an English paper. From Samuel Blackford of the Supreme Court, from college professors and presidents, from Union and Confederate veterans and from newspaper men like Walter Wellman, came letters and editorials of commendation by the hundred.

The only discordant note came from Chauncey M. Depew. The newspaper men reported him as saying, in response to the question as to what he thought of Judge Gresham's Grant monument speech, "Judge Gresham is no diplomat."

The reunion of the Society of the Army of the Tennessee ended with a banquet at the Palmer House, and General Andrew J. Hickenlooper of Cincinnati delivered the annual address. Even then the ranks were getting thin, so ladies were permitted to be present. At my husband's earnest request, Henry Watterson accepted an invitation to come to the dinner and respond to one of the toasts—Grant's words, "Let us have peace." It was thus that I heard "Marse Henry." Speaking of it years afterwards, James Whitcomb Riley, who was also there as a guest and responded to the toast, "The Common Patriot," said: "I will never forget the emotion 'Marse Henry' exhibited on that occasion." With three such gifted men as Henry Watterson, James Whitcomb Riley, and Joseph Medill on its program, the banquet was all that my husband could desire. Mr. Medill's subject was "The Legal Press in the War for the Union." Endowed with qualities of heart and brain, when the final record is made up, Watterson will be placed as the leader who broke through the restraint that existed in spite of all the declarations that the bitterness engendered by the

war had subsided. Whether right or wrong, the man who can make the first advance towards a reconciliation is a great man, a leader, and a patriot. And right alongside of Watterson in this patriotic work was "Private John" M. Allen of Topeka, Mississippi. To be able to break through the ice that I know only too well existed, and make your enemy, if you please, love you, is something more than the attribute of mere man.

Among the letters that came from ex-Confederates was one from Blanton Duncan, whom, as we have seen, had led a regiment of Kentuckians to the Confederacy in 1861. He was then living in Los Angeles. Always alert, he had been through the South and in touch with the Farmers' Alliance. He claimed they had control of the Southern States, that they had even secretly organized negro lodges in which they controlled 1,800,000 negro voters. This organization, united with that in the West, he said would control the country, and the man to head the ticket was Judge Gresham. My husband answered Mr. Duncan by saying that he would not accept the nomination of the People's or any other party if offered him.

Captain C. A. Power, a Union veteran of Terre Haute, Indiana, as a delegate to the preliminary conference of the People's party held at St. Louis, February 22, 1892, said that the machinery would be put to work to nominate Judge Gresham at the People's party convention to be held three months later. To Captain Power Mr. Gresham wrote, on the 16th of February, 1892, as follows:

I am out of politics and have no political aspirations. While I have said to a number of my Republican friends that I am not willing my name should go before the Minneapolis convention, I have not felt called upon to make a public announcement of the fact.

You are not mistaken in supposing that I am a firm believer in popular government. The public welfare should be the aim of all legislation. A man who does not love the human race

and desire the elevation of the masses is not to be trusted as a friend of free institutions. I do not express these views in the hope of recommending myself to you, and association with you in political action, as a fit person to lead your movement; I am not such a person.

And in similar strain letters were written to others, including James L. Orr of Denver, the chairman of the People's party committee after the St. Louis conference.

A movement was on foot to defeat President Harrison's renomination at the Republican Convention to be held at Minneapolis. Senator Quay, ex-Senator Platt, Major William McKinley, then Governor of Ohio; ex-Governor Foraker, and ex-Speaker Thomas B. Reed, still in Congress from Maine, united in the plan. Quay was first in the field. January 13, 1892, at Liberty Hall, on German-town Avenue in Philadelphia, in the Fifth Congressional District, Messrs. Martin and McKinley were elected delegates to the Minneapolis Convention over William R. Leeds, who was the United States marshal for the Eastern District of Pennsylvania, and Charles W. Henry, collector of internal revenue for that district. Messrs. Leeds and Henry were the administration candidates. The election of Martin and McKinley was a great surprise, apparently, to the country at large. Associated with Senator Quay in this movement were John L. Elkins and P. A. B. Widener of the Elkins-Widener Street Car Syndicate, and Hamilton Disson, the Philadelphia manufacturer, who had been a Grant delegate in 1880, an Arthur delegate in 1884, and one of Quay's delegates in 1888. Disson all along professed great friendship for Gresham. Elkins and Disson became two of the delegates-at-large from Pennsylvania in 1892 to the Minneapolis Convention.

January 15, 1892, Mr. Widener wrote Judge Gresham that if he would consent to be a candidate for the Presidency, he and his friends would be glad to support him, and that he thought Senator Quay and the senatorial

combine that would soon caucus in Washington would take Gresham as a candidate. Mr. Widener was the man Senator Quay sent to Joseph Medill in 1888. Promptly a courteous letter was written Mr. Widener declining this offer.

Soon after this Judge Gresham met Senator Quay in New York. In response to questions the Senator admitted he had put Widener up to writing the letter just referred to, and also conveyed his intention to prevent President Harrison's renomination. Then Mr. Gresham told Mr. Quay that never again would he permit his name to be used in a National convention. He told ex-Senator Platt the same thing, and he said to each, "You can not defeat President Harrison's renomination. With practically no party in the South, only officeholders, any Republican administration that will use its power can renominate itself."

Quay proceeded with his work and rounded up practically all the Pennsylvania delegates. Platt did likewise in New York, while McKinley and Foraker had Ohio unanimous, and in the other Republican States the opposition to the President was manifest by the returns. But in the "rotten burroughs of the South" the President was supreme.

Again, on June 3, 1892, Mr. Widener sent a messenger, John A. Glenn of Philadelphia, bearing a letter to Judge Gresham, because he had no time to come himself, and, as he wrote, it would not do to commit to paper what he desired to communicate. The message was from Senator Quay and stated that they would nominate Gresham if he would be a candidate. The combine controlled the Republican National Committee, they would name a temporary chairman who would rule that officeholders from the South were not entitled to vote, and thus they would have a majority of the disinterested delegates. Civil service rules and all kinds of pretexts could be invoked. Quay had boldly and openly killed President Harrison's pet measure,

"The Force Bill," to make the Southern States Republican. Why, then, should Quay let the delegates from those "rotten burroughs" rule him when he had a National Committee that would do his bidding? He had the nerve to act, and now Platt was the follower.

Judge Gresham's answer was spoken plainly: "Go back and tell Mr. Widener my position is the same as I stated it to Senator Quay three months ago, and the Senator should know better than to send me such a message."

This answer, when Glenn delivered it to Widener, made him very angry at Senator Quay for causing him, Widener, to write and send the letter. Widener declared then that he and his Pennsylvania friends would show Quay they were not puppets in his hands. And this is the way they did it. Elkins, Widener's partner, Disson, most of the other Philadelphia delegates and two outside of the city, making nine in all out of sixty, voted for General Harrison's renomination. Afterwards, Senator Quay said that Judge Gresham's answer to Widener was one of the worst jolts he ever received. The Elkins-Widener Syndicate, Disson, and Daniel I. Martin continued their opposition to Senator Quay, but were finally and completely defeated in 1895, when they again acknowledged the Quay scepter. June 4, 1892, Mr. Blaine resigned as Secretary of State. Then Mr. Blaine, Major McKinley, and President Harrison were voted for in the convention, the President being renominated. One thing Matthew Stanley Quay never did, and that was to vote for James G. Blaine in a National convention. Senator Quay and his Pennsylvania delegates, except the Elkins-Widener Syndicate, voted for Major McKinley. Platt voted his New York delegates for Blaine, while Senator Foraker voted Ohio for McKinley.

That Platt and Quay might have compassed their purpose to defeat the renomination of President Harrison is probable. They named the temporary chairman of the convention, one of Platt's men, J. Sloat Fassett. Major



William McKinley was made permanent chairman. On one preliminary proposition Major McKinley ruled that an office-holding delegate whose seat was contested could not vote. The adoption of that rule would have given Theodore Roosevelt the control of the 1912 convention and would have renominated Roosevelt instead of Taft.

After demonstrating what they could do in making it apparent that without his officeholders President Harrison was in a hopeless minority, Senator Quay, on the floor of the convention, said: "We will no longer prolong the contest on these lines."

The People's party assembled at Omaha July 4, and although Judge Gresham had repeatedly, during the preceding three months, notified its leaders he could not accept their nomination, they wanted to draft him. The Vincents after the clean-up in Kansas had moved the *Non-conformist* to Indianapolis and were insisting that Judge Gresham be nominated without his consent. Republicans and Democrats, men of character and influence, practical politicians of great influence east of the Mississippi, men who never afterwards broke their party allegiance, came forward and said, "If you take the nomination, we will vote for you." Colonel Robert G. Ingersoll from the Republicans and Senator D. W. Voorhees from the Democrats said, "We will support you on the stump." Lawyers, judges, newspaper men, including editorial writers, urged him to say he would accept. T. V. Powderly, the head of the Knights of Labor, and General J. B. Weaver of Iowa, who was subsequently made the nominee of the People's party at Omaha, united in a telegram with others asking that the nomination be accepted. The final answer was as it had been from the beginning: "While I agree with the People's party on some questions, I do not on others and can not accept."

## CHAPTER XLII

### DEMOCRATIC CONVENTION OF 1892

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GROVER CLEVELAND NOMINATED FOR PRESIDENT—THE PLATFORM—THE TARIFF “PLANK” CAUSES MAJORITY AND MINORITY REPORTS—THE MINORITY REPORT ADOPTED AS THE PLATFORM.

I SAT with my husband on the platform when Calvin S. Brice called the Democratic Convention of 1892 to order, and we witnessed many of its proceedings. The convention was held in a wigwam built on the Lake Front, Chicago. While the hall had a large seating capacity, it was a monstrosity in every other way.

The sentiment of the masses of Chicago seemed to favor the nomination of Grover Cleveland. The preliminary work for the World's Fair was going on, and I saw many men from all parts of the country, and heard much of the talk that preceded the convention. Many of the rich men, our neighbors, were opposed to Mr. Cleveland's nomination. They made much of Calvin S. Brice, then a Senator from Ohio and chairman of the Democratic National Committee. They said Mr. Cleveland could not possibly secure the nomination because the delegates from his own State would be against him. My husband told them that even with the New York delegates against him, Mr. Cleveland's nomination could not be prevented. I was greatly interested in the situation, and thus it was that I insisted on attending the convention.

There was the New York delegation, led by Tammany and supporting David B. Hill. Our friend Henry Waterson was present, attempting to lead the Kentuckians against Grover Cleveland. Governor Horace Boies of Iowa

was Watterson's candidate. William C. Whitney, Don M. Dickinson of Michigan, and Senator William F. Vilas of Wisconsin, who had been members of Mr. Cleveland's cabinet, were in charge of Cleveland's forces. After the preliminary organization, and after the Committees on Credentials and the Platform had gone out, there were speeches by a number of gentlemen. Senator John M. Palmer spoke first, but as one old fellow who sat behind me said, the general's eloquence did not set the prairies afire.

Congressman William L. Wilson of Virginia, who was known to voice Mr. Cleveland's views, made a speech in which he advocated a reduction of the tariff, but keeping in mind the interests of the manufacturers that had been fostered by the tariff, saying they should have time to adjust themselves before putting into effect new schedules, he attacked the McKinley tariff, but did not advocate Henry Watterson's tariff for revenue only. This gave us the cue to what the contest would be in the Committee on Resolutions. There it waged long.

Finally, on the third day, after an all-night session, Senator Vilas read the report of the Committee on Resolutions, that is, the report of the majority of the committee. There was a single dissent—Lawrence J. Neal of Ohio made a minority report. The only difference was on the tariff "plank," and to only part of that, as reported, was objection made. As these planks had a bearing on my husband's position I give them here, and the debate that followed on the motion of Mr. Neal, seconded by Henry Watterson, to substitute Mr. Neal's plank for that of the committee.

We reiterate the oft-repeated doctrine of the Democratic party that the necessities of the government are the only justification for taxation, and whenever a tax is unnecessary it is unjustifiable.

That when custom taxation is levied upon articles of any kind produced in this country, the difference between the cost of labor here and labor abroad, when such a difference exists,

fully measures any possible benefits to labor; and the enormous additional impositions of the existing tariff fall with crushing force upon our farmers and working men, and for the mere advantage of the few whom it enriches exacts from labor a grossly unjust share of the expenses of government; and we demand such a revision of the tariff laws as will remove every iniquitous inequality, lighten every oppression, and put them on a constitutional and equitable basis.

But in making a reduction in taxes it is not proposed to injure any domestic industries, but rather to promote their healthy growth. From the foundation of this government taxes collected by the Custom House have been the chief source of Federal revenue. Such they must continue to be. Moreover, many industries have come to rely upon legislation for successful continuance, so that any change of law must be at every step regardful of the labor and capital thus involved. The process of reform must be subject in its execution to this plain dictate of justice.

We denounce the McKinley Law enacted by the Fifty-first Congress as the enormity and atrocity of class legislation.

Lawrence T. Neal's proposed substitute was as follows:

We denounce Republican protection as a fraud—a robbery of the great majority of the American people for the benefit of the few. We declare it to be the fundamental principle of the Democratic party that the Federal government has no constitutional power to impose and collect tariff duties except for the purpose of revenue only, and we demand that the collection of such taxes shall be limited to the necessities of the government when honestly and economically administered.

The debate was short and crisp. Senator Vilas read the majority plank and said not another word. Mr. Neal read the substitute and spoke in its support. Henry Waterson followed Mr. Neal. He asked the secretary to read *the tariff for revenue only* plank of the platform of the Democratic party of 1876. While it was being read Mr. Waterson stood silent, the admiration of friend and foe in the convention. All he said was: "I saw it confirmed in 1888. The majority report is the platform of James G. Blaine."

Senator Vilas answered: "The majority report is the Democratic platform of 1884, and Henry Watterson helped with the preparation of the '84 platform."

Mr. Watterson replied: "Since then we have had the Morrison Bill and the Mills Bill and Cleveland's tariff message of 1887, and are you now going back to the straddle of 1884?" My husband said a lawyer would hardly have cited Cleveland's message of 1887 in support of a tariff for revenue only.

Mr. Neal's motion prevailed by a vote of 564 to 342.

The *Courier Journal's* account of this debate is interesting and illuminating:

As the young Hercules of Democracy stood on the platform waiting for the cheers to subside, he presented the appearance of a lion eager to jump on his prey. He faced 20,000 people, all eyes upon him. He knew with whom he had to deal. He knew that Cleveland himself was back of the assault upon tariff reform which had been made by Cleveland's own lieutenants in the convention.

After what occurred to-night, set on foot by the friends of Grover Cleveland, and which resulted in their disaster, I feel satisfied that if the convention had had another day without making the nomination of the ex-President, he would have been beaten, as he richly deserved to be. This is not the first time Cleveland had attempted to straddle on the tariff question, and the magnificent Democratic victory to-night should be a lesson to him and his followers.

And where stood Henry Watterson! Not with the Platform Committee, but on the floor among the boys in the trenches, and you can bet he got on the committee with both feet when the occasion required that he should resent a stinging insult to the Star-eyed Goddess of Reform.

There was a single ballot. Mr. Cleveland received the conventional Democratic two-thirds and was nominated. The vote was: Cleveland 617, Hill 114, Boies 103, Gorman 36, Stevenson 16, Carlisle 14.

In notifying Mr. Cleveland of his nomination, Mr. Wilson, as the spokesman of the Committee, ignored tariff for revenue only, came out for a downward revision of the tariff, and then Mr. Cleveland in his letter of acceptance responded as follows:

Tariff reform is still our purpose. Though we oppose the theory that tariff laws may be passed having for their object the granting of discriminating and unfair governmental aid to private ventures, we wage no exterminating war against any American interests. We believe readjustment can be accomplished in accordance with the principles we profess (taxation for the purpose of maintaining the government), without disaster or demolition. We believe that the advantages of freer raw material should be accorded to our manufacturers, and we contemplate a fair and careful distribution of necessary tariff burdens rather than the precipitation of free trade.

We anticipate with calmness the misrepresentation of our motives and purposes instigated by a selfishness which seeks to hold in unrelenting grasp its unfair advantage under present tariff laws. We will rely on the intelligence of our fellow-countrymen to reject the charge that a party comprising a majority of our people is planning the destruction or injury of American interests; we know they cannot be frightened by the specter of impossible free trade.

After the publication of Mr. Cleveland's letter of acceptance, Joseph Medill said, "We will now be unable to distinguish Henry Watterson from an old Henry Clay Protectionist Kentucky Whig until after the election. Ever since 1872, when 'Marse Henry' supported Horace Greeley, he has had ague fits of protection just before election. He is now for a tariff for revenue with incidental protection. He will not recover until just after the 8th of November."

After Mr. Cleveland had been nominated my husband said to W. C. Whitney and Thomas F. Bayard, "You will carry Indiana certain, so instead of nominating Isaac P. Gay, nominate some good man from Illinois and carry this State." And Adlai E. Stevenson of Illinois was nominated.

## CHAPTER XLIII

### SECRETARY OF STATE

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GRESHAM VOTES FOR CLEVELAND—AGREES WITH HIM ON TARIFF—CRAWFORD FAIRBANKS ASSEMBLES COMPETING MANUFACTURING PLANTS—GRESHAM PUBLICLY STATES POLITICAL POSITION—DEMOCRATIC COMMITTEE AND PEOPLE'S PARTY GET IN TOUCH—CLEVELAND ELECTED—FINANCIAL PANIC—CLEVELAND OFFERS GRESHAM SECRETARYSHIP OF STATE—GRESHAM DECLINES, THEN ACCEPTS—CONFERENCE AT LAKEWOOD—POPULARITY WITH SOUTHERNERS.

AFTER Walter Q. Gresham declined the People's party nomination the Republicans seemed to take it as a matter of course that his action was in their interest. Cordiality was manifest on every hand. It was announced by a close friend of President Harrison that Judge Gresham would be appointed to the first vacancy in the Supreme Court, and several were not far off. At this time newspaper comment in this connection became embarrassing, so it was announced that a position in the Supreme Court, if offered by President Harrison, could not under the circumstances of that time be accepted. Soon the rumor was abroad that Judge Gresham would vote for Mr. Cleveland. Newspaper men and personal friends importuned him to know his position. Pressure was exerted to keep him quiet and also to give the public the benefit of his views. Letters of inquiry came by the hundreds. To his personal friends it seemed best that he should disclose his position. Candor required it. To W. B. Slemmons<sup>1</sup> of Corydon, Indiana, the son of our old family physician, the man he had offered a place on his staff when before Atlanta in 1864, he wrote October 6, 1892:

<sup>1</sup>See pages 295-6.

I have your letter of yesterday. I have made no public announcement of how I shall vote this fall and it is not my intention to make any. I shall give no interviews; I have written no letters. However, I will say to you, but not for publication, that I expect to vote for Mr. Cleveland because I agree with him on the tariff question. I supported the ticket in good faith in '88. I fully realize the seriousness of the step I have resolved to take. It will likely call down abuse, ridicule, and misrepresentation, and it means the loss of many old and valued friends. I shall simply be true to my convictions. I can gain nothing by such a course. I am willing for others to think and act for themselves, and if I am censured for exercising the same privilege, I must and can stand it. If I did not disagree with the Republican party on fundamental issues, I would vote its ticket, whatever I might think of its candidates.

About this time I went with my husband to Indianapolis to visit our friends, Mr. and Mrs. A. C. Harris. To Mr. Harris, a lifelong Republican, and to C. W. Fairbanks, afterwards Vice-President, my husband clearly made known his support of tariff reduction and his purpose to vote for Mr. Cleveland.

From Indianapolis Judge Gresham started for Springfield, Illinois, to sit with Judge Allen in some cases the judge wanted him to hear with him. On the way he stopped at Terre Haute to accept an invitation, which Senator Voorhees, John E. Lamb, and Crawford Fairbanks had previously sent him, to visit them and see the horse races, which were then a new feature of that growing and prosperous city. On a beautiful afternoon they saw "Nancy Hanks" lower the record for trotting horses from 2:08 to 2:04. In the evening at dinner at Mr. Fairbanks' residence, there was a full discussion of men and measures. Always a Democrat, but for a tariff for revenue with at least incidental protection, Senator Voorhees was glad that Judge Gresham would vote for Cleveland, although he criticized Cleveland severely. His personal dislike for Cleveland, like that of many of the men of his party, was very strong.



Crawford Fairbanks was of that practical type of man who saw things clearly. When very young, he had gone into the army in the middle of the war, but not too late to earn a commission. Originally a Republican, he had long been a Democrat; he had gone to the Democratic party on account of his opposition to sumptuary legislation. That the high schedules of the McKinley Bill fostered the trusts, Mr. Fairbanks frankly avowed. As a business man and a speculator, he grasped the opportunity the situation presented. Long before the Sherman Act was passed, Fairbanks was in the business of assembling or putting together competing manufacturing plants. The sale of his distillery to the trust released a lot of capital. Soon after the Sherman Act was passed, he was a party to a combination that was organized in the office of John W. Herron in Cincinnati. Mr. Herron was simply doing what almost every leading lawyer of that time did. He was the father-in-law of William H. Taft, who was still Solicitor-General. There was a great contest among the mill owners as to who should be president of the new trust. One faction wanted Crawford Fairbanks to be the head of the new organization. But "Banks," as everybody called him, said, "No, let me be treasurer." After the organization was perfected, at dinner in the old St. Nicholas Hotel, "Banks" told his particular friends why he wanted to be *treasurer*. "No matter what the lawyers say about drawing the articles so as not to conflict with the Sherman Act, some judge is likely to come along and declare our organization an unlawful combine or trust. If so, and I am treasurer, I will be in a position to hang onto my own money. And then the judge might go farther and say, 'I won't soil my hands with this tainted money,' and then I will hold the whole jack pot. Let him who wants to, pose as president; I want to be treasurer."

Most of the beneficiaries of the tariff could not look at the situation as Fairbanks did. Senator Voorhees, Mr.

Lamb, and Mr. Fairbanks thought Judge Gresham should make a public statement of his position. The practical business man was exemplified in Fairbanks in that he did not believe, as he said, that "Judge Gresham could stand the pressure and make a public statement."

After a short term of court at Springfield, Mr. Gresham returned to Chicago and was confronted with the statement of Secretary of the Treasury Charles Foster of Ohio, who was campaigning in New York, and other speakers, that it was untrue that Judge Gresham was out of harmony with the Republican party on the tariff question and would vote for Mr. Cleveland. A like statement was issued from the Republican National Committee. It was even said that the Republican managers proposed to issue a forged letter, with "Your name to it, making you out a supporter of General Harrison." Newspaper men like Walter Wellman and Morris Ross wrote him powerful letters about his duty to let the country know his views. These statements, appeals, and protests finally decided Judge Gresham that he owed it to himself to set before the country his position. After it had been decided that the best way to do so would be to write a letter to some well-known man, the question as to whom this man should be was much discussed. He must be a man of character, with no embarrassing or entangling alliances. Many names were considered and rejected. Finally Major Bluford Wilson was decided on, and the following letter was addressed to him:

CHICAGO, ILL., Oct. 27, 1892.

TO THE HON. BLUFORD WILSON,  
SPRINGFIELD, ILLINOIS.

DEAR MAJOR:—

I have your letter of the 21st inst. I did tell you at Springfield that after mature reflection I had determined to vote for Mr. Cleveland this fall because I agree in the main with his views on the tariff and did not believe in the principles embodied in the

McKinley Bill. I adhere to that determination and have said nothing indicating a change of purpose.

It is not true that with my knowledge or consent the President was asked to appoint me to any office. It is not true that I requested any one to do anything to obtain the Republican nomination this year.

It is not true that I voted for Mr. Cleveland in 1888. I voted the Republican ticket at every Presidential election since the party was organized, except in 1864, when I was not able to go to the polls.

The Republicans were pledged to a reduction of the war tariff long before 1888, *and during the campaign of that year the pledge was renewed with emphasis again and again.*

Instead of keeping that promise, the McKinley Bill was passed, imposing still higher duties. It was passed in the interests of the favored classes and not for the benefit of the whole people. It neither enhances the price of farm products nor benefits labor. Wages are and ever will be regulated by supply and demand. Duties were imposed upon some articles so as to destroy competition and foster trusts and monopolies. I think you will agree with me that this was an abandonment of the doctrine of moderate incidental protection. The tariff is now the most important question before the people, and whatever others may do, I shall exercise the right of individual judgment, and vote according to my convictions. I think, with you, that a Republican can vote for Mr. Cleveland without joining the Democratic party. How I shall vote in the future will depend upon the questions at issue.

Yours very truly,

W. Q. GRESHAM.

On a dining car going out of Chicago on the Chicago & Eastern Railroad, Crawford Fairbanks and a number of men were talking politics. One had been deriding one of the waiters who in response to a question said he would vote for Grover Cleveland. Finally the negro said, "Judge Gresham says the niggers don't have to vote the Republican ticket no more. Mister Quay he done changed the constitution of the Republican party. He puts the dollar

before the man. Abraham put the man before the dollar."

Meanwhile the Democratic National Committee got in touch with the People's party organization, with the result that the Democrats put up no electors in Kansas, Nebraska, Colorado, Idaho, Nevada, and Wyoming. Whether or not Mr. Cleveland knew about this I do not know. But I do know that William C. Whitney and Mr. Harrity, who was chairman of the Democratic National Committee, knew of it and arranged all the details. The Democrats could not possibly carry Kansas, Nebraska, Colorado, Idaho, Nevada, and Wyoming. To cast the electoral votes of these States for General Weaver might prevent an election in the electoral college. Should the election go into the House, the Democrats were there in a large majority in a vote by States, so that Mr. Cleveland would be elected.

Because Walter Q. Gresham did not agree with the People's party, in all things, he did not think he should scorn or ridicule them. And after he declined their offer he wrote General Weaver a cordial personal letter, which was promptly answered. They had met during the Civil War.

Back of the People's party organization were the silver mines of the mountain States. It is due to Mr. Cleveland to say here that he was in 1892 opposed to the unlimited coinage of silver and also had been opposed in 1890 to coinage at the rate of 800,000 ounces per month; that is; to the enactment of the Sherman Silver Law. Every well informed man who voted for him knew this. It clears him of all the charges of want of candor that were afterwards brought against him by the friends of silver. That he was not as tactful in dealing with them as he might have been, and could still have been firm and maintained the gold standard and perhaps not have subjected the country to the strain of the campaign of 1896, may well be asserted.

Mr. Cleveland had a majority over General Harrison and General Weaver in the electoral college. The vote

stood, Cleveland, 277, Harrison, 145, Weaver, 22. Considering the increase in population, General Harrison and the Republican party fared badly at the hands of the voters. Transferring Democratic votes to Weaver in Kansas, Nebraska, Colorado, Idaho, Nevada, and Wyoming, held Mr. Cleveland's popular vote down. William Jennings Bryan, for example, voted for Weaver. The popular vote was: Cleveland, 5,556,562; Harrison, 5,162,894; Weaver, 1,055,424; Bidwell, Prohibitionist, 264,066. In 1888, in the nation at large, the vote was: Cleveland, 5,538,560; Harrison, 5,441,902; while the electoral vote was: Harrison, 233; Cleveland, 168. In Indiana in 1892 the vote was: Cleveland, 262,740; Harrison, 255,615; Weaver, 22,208; Bidwell, 13,050. In 1888, it was: Harrison, 263,361; Cleveland, 261,013. As Judge Gresham predicted to William C. Whitney and Thomas F. Bayard, Illinois voted for Cleveland.

Following the election, the *Chicago Tribune* and the *Chicago Inter-Ocean*—especially the *Inter-Ocean*—were very critical toward Mr. Gresham in their editorials. Their criticisms brought forth defenses from friends. One of these, Oliver T. Morton, in an interview at Indianapolis, stated that Judge Gresham wished his name withdrawn as a candidate in 1888, as soon as the platform was adopted, and then the young man proceeded to attack the editors by name. To but one of the critics did Judge Gresham make any answer. It was to Joseph Medill of the *Chicago Tribune*.

HON. JOSEPH MEDILL,

November 7, 1892.

MY DEAR SIR:—

I recognize the address on an envelope just received, containing an editorial from the *Inter-Ocean* of the 4th inst., as your handwriting. I am not disturbed by what Mr. Nixon has said. It is not true that I was ever a frequent visitor at his office. Although your criticism was not just, it did not offend me. I can understand that in your situation you felt obliged to give me a

lick. I assure you that I shall ever feel grateful to you for the past. I regret that Mr. Morton mentioned your name in his interview at Indianapolis last Saturday.

After my interview with you at my chambers the day the platform was adopted in 1888, I saw some of my friends at the Palmer House and told them how I felt, what I thought of the tariff plank, etc. I also told them what your view of the situation was, and they all agreed with you. Mr. Morton was one of the gentlemen then present. It is true that nothing but fear that I would embarrass you and other friends prevented me from sending a letter to the convention, withdrawing my name as candidate. I never did believe in high tariff or the McKinley Bill, and I told a number of my friends that I would not vote the ticket again if the party adhered to its then platform. Both you and Mr. Patterson know where I have stood on the tariff question. I have not changed. I have no political ambition, but if I had, no one realizes better than I do that I have committed political suicide. Some people are unable to understand that a man can deliberately do that.

Faithfully yours,

W. Q. GRESHAM.

The next few months were pleasant. The only disturbing fact was the talk of a panic which had been predicted and prepared for by many financiers and business men ever since the passage of the Sherman Silver Act providing for the coinage of 800,000 ounces of silver monthly on the basis of about fifty cents on the dollar. But instead of putting out the coin, \$1, \$2, \$5, and \$10 certificates were issued against it. Banks were hoarding gold. As Samuel W. Allerton, one of our neighbors, said, "The money sharks and the Jews are using the silver certificates to jerk the gold out of her. Soon she will be busted." "She" was the United States Treasury. Illiterate, but very intelligent and a very rich man, Samuel W. Allerton had changed his views about Walter Q. Gresham being an unsafe man. "Soon we will be on a silver basis," he said. On presentation and demand the Treasurer of the United States

and the Assistant Treasurers in New York, Chicago, and San Francisco would redeem the silver certificates in gold. Nelson Morris was a co-director with Mr. Allerton in the First National Bank of Chicago. "Of course," said Mr. Allerton, "Nels will swap a silver dollar for a gold one every day in the week, especially when the silver dollar is worth only 50 cents." But it was at the Sub-Treasury in New York that the greatest swapping was done. The Jews without a country, for not all of that race who were living in New York were naturalized, are not to be censured for taking advantage of the situation. And the Jews were not the only men who "jerked the gold out of her." The responsibility was on the men who created the system. On the other hand, there were Jews like Nathan Strauss who arose to the best level of American citizenship. While the silver certificates and greenbacks were being used to deplete the Treasury of gold, powerful pressure was brought from financial centers on the administration to induce it to preserve the gold standard. Secretary of the Treasury Foster had prepared the plates for the purpose of printing the bonds with which to buy the gold to preserve the integrity of the government, when President Harrison put his foot down and arbitrarily said he would not consent to the issue of any bonds for that or for any other purpose during his administration. All that President Harrison could do was to postpone for a while the storm that the legislation he had consented to was bound to produce.

Norman B. Ream — "Farmer Ream," he was called — one of President Harrison's "kitchen cabinet" in Chicago, brought us this word. Mr. Ream owned immense tracts of corn land in Illinois; he was a successful board of trade operator, was in all kinds of enterprises, and owned a great deal of property. He was the ablest and best poised of all the big men who had made Chicago in a commercial and industrial way. A Pennsylvanian by birth, a veteran of the Civil War, and, of course, a Protectionist of the

extreme school, he did not believe in such laws as the Sherman Anti-Trust Act and, under the advice of counsel, sailed in the teeth of them. And the lawyer who merely listened and was ready to put through what Norman B. Ream wanted done was the best lawyer. Mr. Ream put his house in order soon after the passage of the Sherman Silver Act and then went to selling almost everything short. He died in New York, one of the strong men in Wall Street, possessed of immense wealth. Simple in manner, never purse proud, Norman B. Ream possessed a facility of expression never surpassed.

I had heard J. W. Doane, president of the Merchants' Loan and Trust Company, and V. T. Malott, the Indianapolis banker, discuss the financial situation. Mr. Malott was the receiver of the Chicago & Atlantic Railroad. Night after night, while the Sherman Silver Act in 1890 was before Congress, I heard Mr. Malott discuss it. He quoted the "Gresham Law," that the inferior money always drives out the good, and as a banker he predicted that, if the Sherman Bill passed, it would only be a question of time until we would be on a silver basis.

And then there was General Benjamin H. Bristow, who had been Secretary of the Treasury in General Grant's second administration. He discussed the situation over and over again. General Bristow understood the financial question, and he said his clients in New York and the speculators had long been getting ready for the coming panic.

But none of the responsibility and blame seemed on us, and besides, I thought we were through with politics forever, so I was happy. Suddenly I was aroused to the real situation by the receipt of a letter from Mr. Cleveland offering my husband the position of Secretary of State. The offer came in the form of a letter from Mr. Cleveland and a telegram from Don M. Dickinson. Both were received on the same day and at about the same hour.



LAKEWOOD, N. J., Jan. 25, 1893.

HON. WALTER Q. GRESHAM,

MY DEAR SIR:—

Will you accept the place of Secretary of State in coming administration?

You will doubtless be surprised by this proposition but I hope you may see your way clear to accede to my request.

You know enough of cabinet duties to make it unnecessary for me to enlarge upon their character or scope.

I fear that your sensitiveness concerning the view that may be taken of your acceptance of the position in connection with your prior political affiliations and the part you took in the late campaign, may cause you to shrink from a fair consideration on this subject.

I beg you, however, to believe that your sturdy regard for political duty and your supreme sincerity and disinterestedness, seen and known of all men, are proof against any and all unworthy suspicions or malicious criticism.

In really a great emergency, the country needs your services in the place I ask you to fill. In an effort to subserve the interests of my countrymen, I need you.

Can you not come to us? Hoping for an early reply, I am,  
Yours very sincerely,

GROVER CLEVELAND.

NEW YORK, January 27, 1893.

HON. WALTER Q. GRESHAM,

UNITED STATES COURTS.

Confidential. Please wait, I will arrive to-morrow evening. Leaving here on Limited at four-thirty to-day. Please send word to Hotel Richelieu when I can see you. Your house to-morrow evening or Sunday.

DON M. DICKINSON.

I was opposed to my husband's accepting Mr. Cleveland's offer. My home was pleasant, my children and grandchildren were about me, and I felt that the acceptance of the office tendered could add nothing to my husband's fame. He was well and strong, and I had not for many

years felt so free from cares that had been mine since the beginning of the War of the Rebellion. My son joined me in this view. We were not without full faith in Mr. Cleveland's integrity and patriotism. Our reasons were perhaps not entirely unselfish. My husband's personal popularity, which Frank Hatton said was greater than that of Mr. Blaine, we did not want him to sacrifice. His motives would be misjudged and he would be maligned. We pressed home the objection that the panic then actually on, although not apparent to many, was gaining momentum and would soon break and be charged up to the men who must stem it and remove its causes, so far as they could be removed by governmental agency.

Don M. Dickinson spent at our house the Sunday he mentioned in his telegram. I made it as plain to him as I could by my manner and general conversation, while treating him with courtesy, that he was not a welcome visitor, bearing the message which I knew he had to deliver. He knew that I was opposing him, but I left him to my husband. Mr. Dickinson said to me when I met him next in Washington, "You were the coldest woman I had ever met when I saw you in Chicago. You tried to freeze me out, and you largely succeeded. You disturbed me greatly and you almost defeated us. I cannot now realize how you can be so agreeable." I answered him, "I always try to make the best of any situation." That evening he sent me a large bunch of roses. The next letter shows that at first I triumphed over Mr. Dickinson and that Mr. Cleveland's offer was declined:

CHICAGO, February 3, 1893.

HON. GROVER CLEVELAND,

MY DEAR SIR:—

We are in accord on political questions. Our ideas of public duty are the same, and I feel that I would enjoy close association with you. There are demands upon me, however, besides those of my own household, which I feel I could not properly meet

should I go to Washington on your invitation; and realizing your situation, and fearing that my delay has already embarrassed you, I decline the proffered honor. I regret this not because I am ambitious to hold a high office but because I admire your character, appreciate your patriotic motives, and would like to oblige you.

I cannot adequately express the satisfaction it affords me to know that I possess your confidence, and I beg to say that I shall ever cherish for you sentiments of the highest esteem and sincere friendship.

Your countrymen do not doubt your ability, honesty, and courage, and they will not desert you in your patriotic efforts to promote their welfare.

You have paid me an undeserved compliment, but I appreciate it nevertheless.

Faithfully yours,

W. Q. GRESHAM.

Mr. Dickinson returned to New York and there were telegrams from Daniel S. Lamont, George Hoadly, Charles S. Fairchild, W. C. Whitney, John G. Carlisle, and other friends of Mr. Cleveland, urging Mr. Gresham to accept. I will quote but one:

NEW YORK, February 3, 1893.

HON. WALTER Q. GRESHAM:

I know well your feelings, but I think you owe a duty to Mr. Cleveland and to the country. Your motives have not been and will not now be questioned or doubted by the mass of your countrymen. It has been well known everywhere for years that upon the issues now dividing the parties you belong to Mr. Cleveland's side. You should respect his wish. Nothing but the impending shadow of a terrible personal bereavement disqualifying me for any good work has stopped me from carrying on the fight with him. You are strong and represent a large class who have not heretofore stood with our party. Do not let anything small in other minds influence you to turn back from a great call to duty.

W. C. WHITNEY.

And then came Colonel Henry Watterson, who had heard of the offer. He did not come as an emissary of Mr. Cleveland, for the world knows that at that time Mr. Cleveland and Colonel Watterson were not personal friends. It was Mr. Watterson's influence and appeals that moved my husband finally to accept Cleveland's offer. Whatever may have been Mr. Watterson's and Mr. Cleveland's differences, no man has ever more carefully guarded Cleveland's personal and political integrity than Henry Watterson. There was nothing little and mean in "Marse Henry."

In response to one question my husband asked Watterson, if he could support the incoming administration with Cleveland at its head and Gresham as Secretary of State, Watterson promptly replied that he not only could, but would, and "under the circumstances, it is your duty to accept." Most heartily and cordially was this pledge kept, even to the extent of supporting the Hawaiian policy.

The day Mr. Watterson came up from Louisville and made his plea, the offer was renewed in the following telegram:

LAKEWOOD, N. J., February 6, 1893.

TO HON. WALTER Q. GRESHAM:

Every consideration of my duty and personal inclination constrains me to ask a reconsideration of the subject referred to in your letter.

GROVER CLEVELAND.

CHICAGO, ILL., February 7, 1893.

HON. GROVER CLEVELAND,

MY DEAR SIR:—

I think you understand me and I believe I understand you. I have no doubt that you feel that you need me in your cabinet, and I have finally concluded to yield to your wish and judgment. I still entertain misgivings, however, as to the wisdom of the step, but I hope that neither of us will ever have cause to regret it. I

desire that you shall feel perfectly free, even up to the last moment, to substitute some one else in my place should circumstances seem to require it.

Our Circuit Court of Appeals will adjourn Saturday of this week, after which we will need some time to examine and decide the submitted cases. And that is not all. I have on my table a number of important equity cases which should be disposed of before I leave the bench. What shall I do? Can you allow me to remain here a few days after the 4th of March? I will exert myself to finish my work before then. Of course, I understand that it may be necessary for me to see you before you go to Washington.

Sincerely yours,

W. Q. GRESHAM.

LAKEWOOD, N. J., February 9, 1893.

HON. WALTER Q. GRESHAM,

MY DEAR SIR:—

Your letter of the 7th instant came to hand two or three hours ago, and causes me the greatest satisfaction. I know perfectly well that only considerations of patriotism and duty have constrained you to accede to my wishes, and I assure you this vastly increases my appreciation of what you have done. Do you not think I or you had better in a matter-of-fact and unsensational way give the fact to the public that you have accepted the place? If you deem it best that I give it out, I wish you would simply send me a dispatch of some sort to that effect, put in a way that no one needs to understand it but me.

Ordinarily, of course, the names of the cabinet officers would go to the Senate and be confirmed March 5. If you could continue to act as a judge after confirmation, matters can take the usual course and the State Department be left in the hands of those at present in charge, until you are ready to take possession; otherwise, your name need not be sent in and confirmed until your judicial work is done. Of course, conditions exist which may render it desirable that you assume charge as soon as possible, but this must yield to your desire and convenience or to the duties of your present position.

Mr. Carlisle writes me that Senator Morgan would be glad to see me or my Secretary of State, before he leaves for Paris to attend the Bering Sea arbitration; unless you desire to see him, I do not see why your work should be interrupted for that purpose. Perhaps I can ask Carlisle to see him or see him myself.

I would certainly be exceedingly glad to have a chat with you between now and the 4th of March and hope that your work will so clear up as to enable you to come to see me.

I have settled, I think, on five members of the cabinet. I mean to have Carlisle for the Treasury, Lamont for War, Bissell (of Buffalo, one of my oldest friends and former partner) for Postmaster General, and Hoke Smith of Georgia (a very able representative of the new and progressive South) for Interior. This leaves the Navy, Attorney-General, and Agriculture still to be selected. I want George Gray, Senator from Delaware, to accept the Attorney-General's place, but he has thus far, strangely enough, declined. If there was a first-rate man in Alabama, Mississippi, or that neighborhood, I would like to consider him. If not, I am prepared to take a man from almost any quarter.

I offered Agriculture to Boies of Iowa, but he and his friends are reckoning on his making a successful canvass for United States Senator next fall and he declined my invitation. The Navy ought not to be a very hard place to fill, but I have not just the man in my view yet. It is barely possible that I may induce Senator Gray to take the Attorney-Generalship after all, but I hardly expect it.

I would be very glad to receive any suggestions you may make concerning incumbents for these various places. Now that I have secured the head of my Cabinet, I feel that it should be completed as soon as possible.

If your leisure and convenience permit, I hope you will write me. Please address me by letter or dispatch at this place.

Very sincerely yours,

GROVER CLEVELAND.

Ten days later, or to be exact, on the 22d, there was a conference at Lakewood between Mr. Cleveland and Secretaries-to-be Gresham and Carlisle. At this conference there was considered the case of the Hawaiian

Queen, the Bering Sea Arbitration, and the impending panic. It was agreed that whatever measures were necessary to protect the public credit would be taken. The Harrison administration's refusal to issue bonds to keep the requisite amount of gold in the Treasury would not be followed.

The independent press unanimously approved the announcement that Judge Gresham would be made Secretary of State in the incoming administration. Many of the People's party men approved it, and none criticized. At Indianapolis, John H. Holliday, no longer of the *Indianapolis News*, and his successors in that paper, Delavan Smith, William Henry Smith, Charles R. Williams, and Morris Ross, gave it their unqualified indorsement. And so did Federal Judge John H. Baker of Indianapolis. It is not to be denied that there was some Democratic murmuring. Still the announcement was remarkably well received considering the circumstances. William H. English wrote that the Indiana Democrats, with one single exception, approved it, and "that man will keep still." From the old Democratic opponent in the Indiana legislature in 1861, John H. Stotsenburgh and Mrs. Stotsenburgh of New Albany, came cordial greetings. Samuel E. Morse, the Indianapolis editor, had urged Judge Gresham to take the People's party nomination. He and Thomas Taggart, who had conducted the Indiana campaign as chairman of the State Committee, were cordial in their welcome, as they put it, to the Democratic party. They had pressed Mr. Cleveland's nomination against the opposition of Senators Voorhees and Turpie. Both the latter applauded the appointment. Senator Voorhees said in a public interview, "It was the best that could be made between ocean and ocean." Congressman W. D. Bynum and Jason B. Brown of Indiana were equally strong in their expressions.

Henry Watterson, of course, gave it his public approval.

In an editorial and cartoon in his paper, he said, "He that is last shall be first, and he that is first shall be last." And William C. Whitney wrote his approval.

Senator John M. Palmer of Illinois and William H. Morrison—"Horizontal Bill," as he was called—then on the Interstate Commerce Commission both resented the announcement. They were both personal friends of my husband. Subsequently they gave him their most hearty support, especially General Palmer in the Senate. Senator Vilas of Wisconsin remained mute, while Wall, the member of the National Committee from Wisconsin, openly criticized, and then recanted and wrote my husband a letter in which he said he had been mistaken.

But from "the boys in the trenches" the letters and telegrams of approval came by the basketful.

One from Luther W. Abel from St. Louis, late first sergeant, Company H, Twenty-third Indiana Volunteers, who had refused, as he wrote, to re-enlist at Hebron, Mississippi, in February, 1864, and as a consequence, on the order of General Gresham, had been reduced to the ranks, "the worst disgrace ever put on me," illustrates the pressure that was used to get veterans for Sherman's army for the Atlanta campaign, and the cordiality of our greeting. I quote the following from Sergeant Abel's letter:

As I was always a Democrat before and after the war, I made up my mind to get even with you, and when you and Kerr run for Congress in Indiana, I worked day and night against you, using the two orders against you that you sent me at Camp Hebron; and I tell you, they did execution and you were downed with a very nice majority and I got even with you.

Now, General Gresham, I never was more surprised in my life when I read the news stating you had turned over to Democracy. All the enmity I felt against you for your treatment of me left me and I felt joys toward you instead of malice, and as you are appointed to the highest and most honorable position in President Cleveland's cabinet, I am proud to congratulate you.



The cordiality with which my husband, and even I myself, was received by the leading Democrats, disproves the criticism that my husband's appointment, and his acceptance of the office of Secretary of State was a political mistake. Senator Murphy, the Tammany Senator from New York, who, of course, was a hard money man, before we had been in Washington six months said that my husband was his choice for President in 1896. Most of the Southern Democrats took that view and practically all of the Indiana Democrats. Senator Voorhees made no concealment of his views and neither did Thomas Taggart.

I mention this, not that my husband had any ambitions in this direction, for he knew that his health and age would preclude such a course when the time should arrive, but simply to show that he was able to sustain those relations of intimacy and friendship that are essential to enable a man to accomplish much for good in public life. And these relations enabled him to perform his part in helping to repeal legislation that produced the panic which the Republicans had brought upon the nation.

On his way to the conference with Mr. Cleveland and Mr. Carlisle at Lakewood, Judge Gresham did not see Senator Morgan, as he had already sailed for Paris to attend the Bering Sea Arbitration. And so far as I know, Senator Morgan was the only Southern man, barring Senator Gorman of Maryland (and I did not regard him exactly as a Southern man), in either Senate or the House who did not receive us with a cordiality that could not have been assumed.

Indeed, the relations my husband sustained with Henry Watterson and with the Southern men became a source of jealousy, it was said, on Cleveland's part.

## CHAPTER XLIV

### CABINET LIFE IN CLEVELAND'S SECOND ADMINISTRATION

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MR. GRESHAM WARMLY WELCOMED IN WASHINGTON—  
MATTERS OF PRECEDENCE—MRS. CLEVELAND'S INFORMALITY  
—THE NATION'S ROYAL SPANISH GUESTS—DELIGHTFUL  
RELATIONS WITH DIPLOMATS AND THEIR WIVES—RIVALRY  
BETWEEN FRENCH AND ENGLISH MINISTERS—CHINESE  
MINISTER'S WIFE APPEARS IN PUBLIC—MR. CLEVELAND  
OPENS WORLD'S FAIR.

MY husband started alone to Washington on the evening of the 3d of March, timing his arrival after the inaugural ceremonies were over. Soon he wrote me that he had plenty of work, but as the questions were all legal, they were easy. About two weeks later, with my son, I went on to join him. The warmth of his reception had made him most happy.

Henry Watterson had attended the inauguration with a crowd of his extreme Southern followers, who had unanimously approved his judgment in bringing into their fold his Northern friend —“the best Democrat in the administration.” Still, I had my misgivings.

I had never met Mr. Cleveland up to that time, but had met Mrs. Cleveland in 1886, when she was with Mr. Cleveland in his swing around the circle. The evening of the day of our arrival at the Arlington Hotel Secretary Lamont called and announced that I should call on Mr. and Mrs. Cleveland that evening. My husband, Secretary Lamont, and I walked from the hotel to the White House. We were received upstairs in the library. Mrs. Cleveland was in an ordinary day dress and Mr. Cleveland wore a business

suit. We made quite a long call. I watched Mr. Cleveland very closely. He was fat and had a squeaky voice. Why his voice was squeaky on this occasion, I did not then know, for afterwards it always seemed strong and resonant. Mr. Cleveland did not appear at his best, and I must confess I was disappointed at this time in him. Mr. Lamont must have read my face, for as we walked back to the hotel, when we were opposite the old Blaine house, he said, "You will like him better: he will appear better when you know him well."

Mr. Lamont was right. I came to know Mr. Cleveland better and liked him better. He was always kind and considerate and most confidential. I sat at his side at all State functions, many of which were stupid because official etiquette required the seating of guests according to prescribed rules. On these occasions we had to talk and usually there was no restraint. Guarded and careful as I was with newspaper men and women strangers and with designing people that a woman's intuition always detected, with intimates I could discuss even affairs of State. My freedom in expressing myself early in the administration to Mr. Cleveland, Secretary Carlisle, and my husband took the fancy of both Cleveland and Carlisle, and only earned a mild rebuke from my husband. Besides, I was always considerate and made the proper advances to the green and awkward at the White House. I had done that all my life. With a strong man back of me during the War, I had seen that a kind word from even a small woman was appreciated. Early in the Arthur administration I had learned what an aid a cabinet woman could be to the head of the administration by being considerate to a woman who was not accustomed to the ways of Washington official society, if you please, but, possessing character and refinement, would in a short time be thoroughly at home. Possibly her husband was a man of power and influence. If Mr. Cleveland was wanting

in tact, as his critics claimed, he could appreciate it in others.

While it did not come up at the beginning, it did very soon after, and it is proper at this point to mention the fact that, notwithstanding that the succession is, and was then, to the Secretary of State after the Vice-President, Mr. Cleveland gave the ambassadors precedence in all social matters over the Secretary of State. The law had but recently been passed raising the rank of minister to Great Britain and France to that of ambassador, and it devolved on Mr. Cleveland to make the precedent. Sir Julian Pauncefote, the English minister, I know thought Mr. Cleveland was wrong. But it was a matter of indifference to my husband. For instance, I sat at Mr. Cleveland's left and Lady Pauncefote at his right at State dinners. Because my husband was indifferent to some of the forms of official life, he was written down as no diplomat. And the same people, when rebuked for presuming, were more pronounced than ever in their opinion.

Early in the administration, I well remember a day spent at Woodley, where the Clevelands had gone for the Spring. Secretary Gresham had been called out by the President to consult over State matters, and I went along to get better acquainted with Mrs. Cleveland. I sat waiting in the drawing room for some time, when a maid came in and said, "Mrs. Cleveland says, will you please walk upstairs." I was shown into a living room or nursery, and there was Mrs. Cleveland down on the floor cutting a baby sack out of a remnant. She said, "I have just got it, and must finish it before I get up."

We chatted through the morning. Towards noon I grew restless, but still Mr. Cleveland and my husband were engaged. We heard nothing from the library, and finally lunch was announced. This ended the conference of State, and it was insisted that we remain to lunch, which we did. It was as simple as any one could find in any well-to-do

American home. Many were the informal meals we afterwards took at Woodley, and, all reports to the contrary, Mr. Cleveland was most frugal in his eating and drinking. Because he was subject to the gout, an infirmity I too had inherited from my ancestors, Mr. Cleveland was interdicted from the use of wine, and Mrs. Cleveland was inflexible in enforcing the rule. Many a time did I aid him with just one glass of champagne in escaping Mrs. Cleveland's vigilance. Outside of regular official entertainments, the Cleverlands did very little entertaining. With what the government supplied to run the White House, a President could very easily in Mr. Cleveland's time do all that was required in the way of official entertaining and save half of his salary. That Mr. Cleveland left the White House better off than when he entered it the last time is explained by his economy and by Secretary Lamont's management of his private affairs. That Lamont speculated for Cleveland is absurd. He simply looked after Mr. Cleveland's private property as he did his political interests. Lamont made subscriptions on Mr. Cleveland's account to all charities that a President should meet.

Mr. Cleveland was not "bookish" and did not pretend to be a well-read man. He told me Mrs. Cleveland read American history to him at night. In no sense was Mrs. Cleveland a society or a "new" woman. She was purely domestic in her tastes. She was a good mother and she loved babies.

I found many old friends in Washington. Among them was Mrs. Carlisle, wife of the Secretary of the Treasury. I had known her during the Arthur administration, when her husband was Speaker of the House. She was a remarkable woman, possessed of great ability and aptitude for all kinds of life. She was also a warm, disinterested friend. She was the best friend I ever had in Washington.

One day Mrs. Carlisle and I called on Mrs. Cleveland about a meeting of the ladies of the cabinet. Such meetings

are always held, and when there is a lady in the White House, they are held there. Much to Mrs. Carlisle's amusement, Mrs. Cleveland entertained us during the entire visit by letting us watch her wash the baby. Her devotion to her children and to her domestic life, which no one can criticize, prevented her from associating with the wives of Congressmen and others, who for this reason drew the inference that she was reserved and distant. Had Mrs. Cleveland been free to exercise the tact she possessed, she could have mollified much of the resentment that grew up against her husband. This, I believe, is the limit of a woman's functions in politics. Nature never intended that she should vote and march behind a brass band. The question of woman's suffrage did not become a practical one in my husband's lifetime. But in aiding the individual woman no man ever went farther than he, as witness the Angle case and the case of the Hawaiian Queen.

Postmaster-General Bissell came to my husband with much of his department business. Secretary Lamont did the same, and told me that he never called on my husband for information and advice but that he got what he went after. Comptroller Eckels night after night came to Mr. Gresham for advice. He had been a country lawyer and a great friend of Mr. Cleveland before he was appointed Comptroller of the Currency. He was a much overrated man. He was steered right by Mr. Cleveland and by Mr. Gresham, and got the credit for acts which were based on the advice of others. Secretary Smith and Secretary Carlisle were frequent visitors and sought the views of my husband on many occasions on the questions which came up in their departments.

General B. H. Bristow and Mrs. Bristow of New York were temporarily keeping house in Washington and we saw much of them. General Bristow was a friend of Mr. Cleveland's as well as of my husband. He was thoroughly familiar with the financial legislation of the country and

the business situation in New York, and both Secretary Gresham and Mr. Cleveland discussed the situation with him. He bantered my husband a good deal about being a Democrat, and sometimes showed annoyance when my husband said: "You voted for Cleveland in 1884 but did not show your colors."

Soon after we reached Washington, at the British Embassy I met Mrs. William E. Chandler and her husband, who was then in the Senate. Mrs. Chandler was so cordial in her greetings that it caused comment until it was learned that we had been neighbors and particular friends in 1883 and 1884 during the Arthur administration.

My second meeting with Mr. Cleveland was at the dinner to the Infanta Eulalie, an aunt of the King of Spain, Alphonso XIII. The dinner was not good, as I remember it. The soup gave out, and among those who did not get any was Postmaster-General Bissell. The silver looked like plated ware that had been in use in a boarding house. Mrs. Cleveland afterwards had it melted and made smaller in size and into a greater number of pieces. At that time there was not silverware enough in the White House to set a State dinner, and there was no contingent fund out of which additional silver could have been purchased. Notwithstanding this, Mrs. Cleveland's action in having it melted was much criticized, as the silver had been bought during a great many different administrations and some of it had been in the White House for many years.

It had been arranged by the previous administration to bring the Infanta Eulalie and the Duke de Veragua to the World's Columbian Exposition as our nation's guests. The Duke de Veragua was a lineal descendant of Christopher Columbus. A member of royalty cannot be entertained in a republic without embarrassment to both parties. The invitation having been extended, it could not be withdrawn. When the Spanish minister represented that the Infanta demanded that a furnished house with

a full retinue of servants be put at her disposal in both Washington and Chicago, the answer given the minister was that ample accommodations would be provided in the hotels. There was surprise in the inner circles of the administration when the minister announced that Her Highness would come at the appointed time.

She and her suite were met at the station by the Secretary of State and conducted to the Arlington Hotel. The next day Her Highness and the Spanish minister were taken by the Secretary of State to the White House and presented to President Cleveland. Mr. Cleveland did not return the call. At this Her Highness and the Spanish minister took great offense, which the people of Chicago thought should not have been vented on them. Among other outings that had been planned for her was a trip to Mount Vernon, which took place after the trip to Chicago. I was sent along as the representative of the administration. We went down the river and back on the "Dauphin." I had much conversation with Her Highness. She said among other things that she always wanted to come to the United States, where women were so free and had such a good time. She was a flirty, frivolous woman, not the kind that would ever have attained the freedom some American women know so well how to enjoy, but which may be abused if society passes into the hands of some of our latter-day sisters.

The Duke de Veragua and the Infanta Eulalie visited the World's Fair under the auspices of the State Department. But Her Highness would not meet the Duke. She and her suite consumed an extraordinary amount of beer, cognac, cigarettes, and champagne during the visit to Chicago. Consternation and horror reigned in the Board of Lady Managers, when they learned that the newspaper men were on the point of telegraphing it broadcast over the country that the cause of Her Highness' conduct, at least at one reception, was that she was under the influence of



liquor. But the newspaper men were complaisant, and suppressed, as they often have, a good story. Still there was wide publicity.

The Board of Lady Managers of the World's Fair, of which Mrs. Potter Palmer was the head, had many functions for the Spanish guest. Mrs. Palmer's jewels so far outshone those of the Infanta that the latter told a few friends in confidence they were glass. Such confidences are always soon broadcast, as they are often intended to be, and the result was that there was a great commotion in the Board of Lady Managers and among the Chicago society women who wore their most beautiful toilettes and had irreproachable manners. At receptions Her Highness insisted on receiving the guests sitting; not even to the Vice-President of the United States would she rise and give her hand. At some of the functions she even refused to meet the guests. She accepted invitations, and at the last minute, without excuse or apology, broke them.

The visit of the Infanta Eulalie did the cause of poor old Spain much harm in America. One of the ladies whose position clothed her with the responsibility of hostess to Her Highness, concluded her account to the Secretary of State:

Of course no one knows why Congress invited this representative of a queen to our country, and neither do we know why she accepted the invitation. It would seem that there must have been some idea on foot of doing her honor, and on her part of receiving attentions in a proper spirit, and cementing the bond of good feeling between the two countries. I think it rather fortunate that we are to have no more royal personages, for I feel sure that neither the press nor the people could succeed another time in smothering their feelings in case they were outraged.

The Secretary of State made no secret of his relief when Her Highness sailed for home. The Duke de Veragua so enjoyed American hospitality and was so impervious to all hints that he was overstaying his invitation, that finally

Secretary of State Gresham wrote the naval officer, Commodore Davis, who had him in charge, to take him to New York and *bid him good-bye*.

Sir Julian Pauncefote, the English ambassador, had been educated for the bar. His legal education, he said, was a great aid in his diplomatic work. A mastery of the details of the practice and the principles of jurisprudence as applied in the courts for years and corrected by Parliament, had made plain, he said, that the great question of the age was the economic one, that of capital and labor, and it was so recognized by his government. It was to be solved on principles of righteousness and justice, and the same was becoming truer every day of international problems. In this he and Walter Q. Gresham were in accord at the start.

Early in the administration, as I have before stated, at the same time the British and French governments raised their ministers to ambassadors to the United States, great rivalry ensued between Sir Julian Pauncefote, the British minister, and M. Jusserand, the French minister, as to who should become the Dean of the Diplomatic Corps, which depended on who was first recognized by our government as ambassador. My husband took the lead in recognizing Sir Julian first, and in raising Mr. Bayard, our minister to Great Britain, to the rank of ambassador. M. Jusserand was very much disappointed and sulked like a boy, but after a time suppressed his disappointment and acted the diplomat. Madame Jusserand never could conceal her disappointment. She was the daughter of a very rich resident of Georgetown who had made his money publishing the *New York Ledger*. Lady Pauncefote and the Misses Pauncefote were very agreeable, and our relations with all were particularly intimate. Notwithstanding that Mr. Cleveland put Lady Pauncefote on his right, he did much more talking to me than he did to her, and I was much freer in giving him my views than was the staid English

woman. But our positions were different. I was at home and she was abroad.

With all diplomats our relations, of course, were cordial. Especially were we on intimate terms with Prince Cantacuzene, the Russian minister. Walter Q. Gresham, at his first meeting with the prince, acknowledged our indebtedness to Russia for the aid his government had rendered us during the War of the Rebellion. With all the representatives of the South American republics we were intimate. The Mexican minister, M. Romero, and M. Mendonça, the Brazilian minister, were among my husband's special friends. He regarded them as men of exceptional ability. But it was not so with all the diplomats. The telegraph has made it easy for a man without much natural gift to succeed in the diplomatic service, where years ago he could not. I never met a disagreeable woman among the families of the diplomats. But the same number of American women in their places would have been far better informed and more alert. The brightest woman among them I ever knew was Madame De Struve, the wife of the Russian minister in Mr. Arthur's time.

During the Arthur administration the wives of the members of the Chinese Embassy were never seen in public. We did not even meet them in private. I remember that we were shown the Chinese baby that was born at the Chinese Embassy, but not the mother.

The first wife of a representative of an Oriental nation to appear in public was Madame Yang-Yu. It was during the second Cleveland administration. She was the wife of the Chinese minister. When I first met her she felt the contrast between our dresses and costumes, much it seems to me, as I would have felt it had our places been reversed and I been in China. She manifested it by taking my sleeve and saying, "Pretty!"—one of the few English words she could utter.

The duty devolved on me to introduce Madame Yang-Yu to the public, as the Chinese minister had requested that I should do so. It was arranged that I should call on her and take her, at an appointed time, to the White House to visit Mrs. Cleveland. But when we started from the Embassy, she asked to be driven around the city and to the Capitol, and to be shown the public buildings. It was not according to orders, but I determined the Chinese woman should have her way. Accompanying her was an interpreter and her little boy, a bright little fellow, eight or nine years of age. She appeared in her Oriental costume, with all its bright colors, and as we were in an open carriage and she was the first Chinese woman to appear in public, we attracted a great deal of attention. The newsboys and gamins chased us and yelled at us. They said, "Hey, here's your China woman!" The Madame enjoyed it, the boys enjoyed it, and while it was not to my taste to be chased and hooted at by the Washington urchins, I bore it until we had driven the town over. Then later I took her to the White House to see it and meet Mrs. Cleveland. She was very curious as well as bright, and examined our dresses and the furniture, and was shown everything in the White House, from the kitchen to the garret.

The first time Madame Yang-Yu attended a dinner out of the Embassy was at one of the diplomatic dinners given by my husband and myself. In the arrangement of the seats, which was according to diplomatic etiquette, the Portuguese minister was assigned to take out to dinner the wife of the Chinese minister. This made him very indignant. He protested and said that she might be one of several of the Chinese minister's wives. But he was told he could not object on that ground, as we had no official or unofficial advices that there was any other wife, or wives, than Madame Yang-Yu.

At the diplomatic dinner at the White House, following this dinner, the Portuguese minister, much to his disgust,

was again seated beside Madame Yang-Yu. As she seemed to be having a quiet time of it and the minister still bore his ill-tempered look, I caught her eye and raised my glass to her. After the dinner she came to me, and we sat for a long time on the sofa in the East Room and talked as well as we could with my little Chinese and her not a little English, and partly by signs. After a time some of the ladies came up and asked me what we were talking about. I told them the Madame was commenting on the large amount of material in their trains and the absence of it on their shoulders.

Yang-Yu was an astute old fellow. In intellect he was the match for any of the diplomats. He came to see us often. On one occasion he asked us about our Christ, and then said, "If only his followers are to be saved, how about our Confucius and his followers?"

Before the Chinese-Japanese war and while we were in Washington, Mr. Kurino, the Japanese minister, was not accompanied by his wife. I saw a good deal of him, and my husband much more.

It was the universal desire that the President and Mrs. Cleveland attend the World's Columbian Exposition. The Board of Lady Managers sent to Mrs. Cleveland a special invitation, and it was a great disappointment to them and to the thousands of others who expected to see her that she did not visit the Fair. Mr. Cleveland, Mr. and Mrs. Carlisle, Secretary of the Interior Smith, Secretary of the Navy Herbert and Miss Herbert, and ex-Secretary of State Thomas F. Bayard and Mrs. Bayard, who were invited at my husband's request, my husband's secretary, Kenesaw M. Landis, my husband, and I made up the party which went to Chicago on a special car.

At this time Mr. Bayard had been appointed ambassador to Great Britain, and it was his and my husband's desire that he visit the World's Columbian Exposition before taking up his duties at the Court of St. James. In the

convention that nominated Mr. Cleveland for the Presidency in 1884, Mr. Bayard had been a formidable candidate. Secretary of State during Mr. Cleveland's first administration, Mr. Bayard had been, with W. C. Whitney, an advocate of Mr. Cleveland's renomination in 1892. While in Mr. Arthur's cabinet my husband had become intimate with Mr. Bayard and had kept up that cordiality during the intervening years, and most friendly and intimate were their relations while my husband was in the State Department and Mr. Bayard at the Court of St. James.

Mr. Cleveland spent several days in Chicago. We arrived at the city the Saturday before the Monday the Fair was to be opened. Mr. Cleveland went to our church, the Second Presbyterian, of which Dr. Simon J. McPherson was pastor, and then accepted the invitation of my daughter to attend the christening of her baby, Harriet Carleton Andrews. The afternoon was spent at our residence. There Mr. Cleveland was visited by a great many of our neighbors, almost all of whom were Republicans who had depreciated my husband for voting for Mr. Cleveland. Mr. Cleveland made himself most agreeable, and afterwards many of them told me my husband had not made so great a mistake after all in voting for him.

At the opening of the World's Fair Mr. Cleveland made a short speech, in excellent taste, and it was well received, as he was. In a crowd he was a man who took with the people. They felt he was one of them. They trusted him. No one could view him in a crowd and fail to understand his influence over people. Not only would they go to see him, but they would vote for him. The only man at the Fair who could not get near him was the mayor of the city, the elder Carter H. Harrison, who wanted to be United States Senator and desired to know how Illinois patronage was to be dispensed.

## CHAPTER XLV

### SILVER AND THE TARIFF

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REPEAL OF SHERMAN SILVER ACT—VOLNEY T. MALOTT, INDIANAPOLIS BANKER, URGES PRESERVATION OF INTEGRITY OF THE TREASURY—CONGRESS PROVIDES FOR COINAGE OF NINE MILLION DOLLARS OF SILVER BULLION IN TREASURY—BRYAN MAKES BRILLIANT DECORATION DAY ADDRESS—DEMOCRATIC NATIONAL CONVENTION AT CHICAGO—BRYAN'S GREAT SILVER SPEECH—CLEVELAND AUTHORIZES SALE OF UNITED STATES BONDS TO REPLENISH THE GOLD RESERVE—WILSON-GORMAN TARIFF ACT.

I REMAINED behind to close up our home, so I did not go back to Washington with the Presidential party from the World's Fair. In Chicago I heard much of the panic, which I knew was on before my husband thought of becoming Secretary of State, and the existence of which was one of the reasons why I had urged him to decline Mr. Cleveland's offer. It was being fanned for political and financial reasons.

Mr. and Mrs. Potter Palmer, who had been insistent on my husband's going into Cleveland's cabinet, had always been Democrats and were much concerned in a political way. They were for the repeal of the Sherman Silver Act. Potter Palmer, a practical man of affairs, was one of the ablest men I ever knew. He was born and reared in western New York, and when as a very young man he started West with several thousand dollars it was predicted the youth and his money would soon part company. Instead, the nest egg grew. He had all kinds of property, much of it in stocks and bonds. He founded and sold the business that made Marshall Field and L. Z. Leiter their

fortunes, known to-day as Marshall Field & Company. In the hotel business Potter Palmer increased his fortune. Borrowing three-quarters of a million to rebuild after the fire, he was ready and offered to pay before the loan was due. So good was his credit that he had to pay interest until maturity. Mr. and Mrs. Palmer I believe were among my husband's best and most disinterested friends. They had no notes payable in gold to meet, and owned no notes that were simply payable in money without specifying the kind of money, so they were not influenced by any direct personal interests. In the event that the government went on a silver basis, it would be difficult for people to get the gold to meet their obligations payable in that medium, while, on the other hand, the creditor, except when gold was specified, would have to be content with silver; that is, he would have to be satisfied with about fifty-three cents on the dollar. A woman who thirty years before, during the depression of the Civil War, had considered hoarding a few gold dollars herself, could understand how the big financial houses were then hoarding gold.

Woman-like, perhaps, I jumped to a conclusion too quickly. It was a panic that came from a former administration. The solution seemed easy to me. Let it come and get it over with. I went back to Washington in a couple of weeks. There the talk was of nothing but the panic. The question was, Would the President call an extra session of Congress? The first morning after my return to Washington I went with my husband for a short ride. We stopped at the White House and there met Mr. Cleveland and Secretary Carlisle. They talked about an extra session of Congress. Cleveland said the barrier to that was Senator Voorhees, chairman of the Finance Committee of the Senate: "He is unalterably committed to silver." There was a silence, and the freedom with which Mr. Cleveland had imposed his confidence on me, as it seemed to me, I suppose prompted the impulse, for I



said: "You gentlemen ought to be out more among the people. The big panic that is coming you can not now prevent. You can only postpone it. Let it come now; have it over with. The people will then see who is to blame. The Republican financial and tariff legislation has brought it about. If you postpone it, the Republicans will say you brought it on." Mr. Cleveland's eyes twinkled, Mr. Carlisle looked at me approvingly, but my husband said, "Tillie, what do you know about such matters?" That was the expression he used when I got the best of the argument—which was seldom, I must confess. "Very well," I replied, "I will go and see Mrs. Cleveland and meet you at lunch."

This was in May. Volney T. Malott, the Indianapolis banker, had been in Washington in April, before this conversation took place.

Mr. Malott had long been getting ready. His bank was well supplied with gold. Many other bankers were also prepared for the emergency. They had supplied themselves with gold and were ready to make two for one the minute the country went on a silver basis. The gold in the United States Treasury was down to \$90,000,000. But Volney T. Malott was an honest and patriotic man. As a teller of a bank, he had been through the panic of 1857, and he not only was familiar with the financial legislation of the country and with the bankers in the large cities of the country, but also knew personally the bankers and business men of Indiana. He knew their relations to Senator Voorhees. He said Senator Voorhees would not be heedless to importunities that might come to him from his Democratic friends in banking and business enterprises in Indiana. He could name his men with facility. The Secretary of State took Mr. Malott to the White House to repeat his statements to Mr. Cleveland.

Mr. Malott strongly urged the calling of a special session of Congress and the taking of every measure possible

to preserve the integrity of the Treasury. To this Cleveland answered that the objection to calling an extra session of Congress was the chairman of the Financial Committee of the Senate. Mr. Malott told of the Democratic constituents of Senator Voorhees who would, if given the tip, implore the Senator to report a bill repealing a silver bill for which he, Voorhees, did not vote. Still Mr. Cleveland thought Senator Voorhees could not be induced to consent to the repeal of the purchasing clause of the Sherman Silver Act, and hesitated to call an extra session.

With some of the Republican leaders inoculated with the free silver virus as they had been with the greenback heresies, and with their disposition to play small politics, in which they were aided by those who were profiting unduly by the tariff, it was a serious problem for a President who was not in harmony, personally as well as politically, with the chairman of the Financial Committee of the Senate. There was a conference at the home of ex-Senator Thomas F. Bayard in Wilmington before he went to London as ambassador to Great Britain. The Secretary of State took with him a list of Senator Voorhees' Indiana friends that Mr. Malott had prepared. Mr. Bayard scanned them carefully. Of course he had known Senator Voorhees long and intimately. He believed Senator Voorhees would favor the repeal of the Sherman Act, and was insistent that an extra session be called; but still Mr. Cleveland hung back.

At this time there was in Washington a wealthy New York man by the name of Seth Barton French. He had been a business associate of J. P. Morgan. He had grown children, and he had been a widower, but had married a young wife. She was very fond of society, and her father desired a diplomatic position. Mr. French and General Bristow were great friends, and in addition, their relations had been that of lawyer and client.

At the instance of the Secretary of State, General Bristow asked Mr. French to get up a dinner party and invite

Mr. and Mrs. Morgan. They came, and at the dinner I sat by Mr. Morgan's side. There was doubt as to how he would line up, so he was an object of great curiosity to me. He was uncommunicative, I soon discovered, and I feigned ignorance of all questions political, although I knew exactly what was going on.

Mr. Morgan fell into line for the repeal of the Sherman Act. Business men everywhere were urged to come out for an extra session of Congress, and Mrs. French's father got the desired diplomatic position.

Then it was with Mr. Cleveland's consent that the Secretary of State wrote to Mr. Malott at Indianapolis that Senator Voorhees' business and financial friends in the Democratic party should begin their importunities to their Senator to join in the movement to repeal the Sherman Act. Letters came from every county in Indiana. When the Senator heard from the bankers in Green and Owen counties, he remarked, "And here are Green and Owen; sweet Owen—God bless her!—she has never failed me." That sealed the fate of the Sherman Silver Act. But for the financial situation, an extra session would have been called to revise the tariff. August 7 the special session assembled for the sole purpose of repealing the Sherman Act.

Senator Voorhees had been receiving from the very start all the patronage usually accorded to a senator, or, to put it in other language, all the men that he wanted appointed to office were appointed. He never went to the White House with his requests but always to the State Department. Henry Watterson, who was a sound money man, said, "Leave Voorhees to Gresham."

I had known Mrs. Voorhees when I was in Washington before. Almost daily I saw Senator Voorhees during the summer that they were endeavoring to repeal the Sherman Act. If he did not come to call on my husband during the day my husband went in the evening to see him at his

residence. Frequently my husband was absent when he called. He talked to me a great deal about Thomas A. Hendricks and Joseph E. MacDonald. It was never any effort to listen to Daniel W. Voorhees.

At first the Republican leaders were disposed to play politics and let the administration flounder, and they were encouraged in this by Senator Morgan of Alabama, who had come home chagrined over the defeat in the Bering Sea award. Mr. Morgan declared in a speech in the Senate that he would not be cuckoo for the White House clock. But the situation was so grave and so acute that partisanship had to be suppressed, and the Republican leaders of the sound money persuasion, like Senators Aldrich, Hoar, Hale, Lodge, Quay, and Senator Sherman himself—some of whom had not desired but had acquiesced in the passage of the Sherman Act—came to the aid of the administration and accepted the leadership of a man they claimed had stood for all the financial heresies of the times.

When Walter Q. Gresham was assailed for leading in the fight for the repeal of the Sherman Act—Senator Cullom being one of its instigators, purely for political reasons—Joseph Medill repudiated his Washington correspondent, and to use one of Mr. Medill's own expressions, took Shelby by his coat-tails, sat him down in his seat, and voted him for the repeal of the act he had helped to pass.

One of the questions much mooted was how Senator Voorhees could justify himself in forcing the passage of any act that would tend to lessen the volume of the circulating medium, as the repeal of the Sherman Act would do. I had heard the private discussions. I went to the Senate gallery and heard what was said in public.

Senator Voorhees naively told the people of the country in his speech, when he reported the bill for the repeal of the Sherman Act, that while he was a silver man he was not the kind of a silver man that Senators Aldrich, Gorham, Hale, Morgan, Sherman, and others were, because, as he said,

he had voted against the passage of their Sherman Act. Of course, he might have added—which he did not—that the reason he did not vote for the Sherman Act was because it was limited, while he wanted an unlimited free coinage act. I enjoyed the speech. But I could see that Senator Aldrich did not. His face was interesting, as were the faces of Senators Hoar, Fry, and Hale, as Senator Voorhees spoke. All they could do was to keep still while Senator Voorhees denounced them as half-baked silver men. “Some day,” he said, “we will get a silver bill that *is* a silver bill.”

Late in October the Sherman Silver Act was repealed. One argument that was used—hinted at in the debate by Senator Voorhees and much talked of in the conferences—was that as silver was one of the monies mentioned in the Constitution, there was no hostility to it, as money, in pressing the repeal of the Sherman Act. J. Sterling Morton, the Secretary of Agriculture, induced Cleveland to permit him to make an authorized statement that *per se* there was no hostility on the part of the administration to silver as money.

Statements like these were made, and my husband made them and they were potential. They soon had an important bearing on Mr. Cleveland's party relations.

When the Sherman Act was repealed, there remained \$9,000,000 of silver bullion in the Treasury. After a time the silver men succeeded in getting through Congress a bill providing for the coinage of this \$9,000,000 of bullion into dollars. It was to be coined on the basis of sixteen to one, while the commercial value of gold to silver was about thirty-two to one. Mr. Cleveland was urged to sign the bill, on the theory that it would tend to satisfy the silver men and would be keeping faith with some of those who had voted for the repeal of the Sherman purchasing clause.

My husband was one of the men who urged this upon President Cleveland. Furthermore, he said to him,

"Eighteen million more of silver dollars in circulation will not impair the government credit; it will get the bullion out of the Treasury where it is a continual bait to the silver men." Then it was that Mr. Cleveland for the first time took the position, as he said, that he would drive the Southern Senators and Representatives to sound money, or, as it was then called, the Gold Standard platform. In reply to this statement, my husband said: "You cannot drive them your way, but you are liable to drive them out of your party, and with the Silver Republicans put the country on a silver basis."

President Cleveland and all the cabinet were at Arlington Cemetery on Decoration Day, May 30, 1894. William Jennings Bryan, then a member of Congress, was the orator of the day. As they drove home, in commenting on Mr. Bryan's address, the Secretary of State said to the President, "You will have to reckon with this man Bryan in the future." Still Mr. Cleveland did not believe it.

Two years later, at Chicago, I sat on the platform at the Democratic National Convention and saw Mr. Bryan walk off with the Democratic nomination for president. In the various State delegations before me I recognized the faces of many of the Southern Senators and Congressmen I had met in Washington. The silver men were known to be in a large majority, and were supposed to favor the nomination of Congressman Richard Bland of Missouri, "Silver Dick," as he was called. The Cleveland and Hill Democrats in New York had healed their differences for the time, and Senator Hill sat at the head of the New York delegation. Governor J. E. Russell, at the head of the Massachusetts delegation, led New England; W. C. Whitney, Colonel J. R. Fellows, the orator of Tammany, and Senator Gray of Delaware, made up the complement of gold men.

After two days of speeches, many of them most excellent, on the 10th of June the Committee on Resolutions made its report. Senator Jones of Arkansas, the chairman of

the committee, presented it. He said there were two minority reports, one advocated by Senator Hill of New York and the other by Senator Tillman of South Carolina. The committee had been in session all the night before, as was evident from the appearance of the participants. Senator Tillman led off, but made a bad impression. He wanted the Cleveland administration censured because it had preserved the gold standard, and he took Senator Hill to task for refusing to unite in the "merited rebuke." He advocated silver at sixteen to one; said it was a sectional issue, and boasted, "I come from the home session." Senator Jones, an ex-Confederate, was on his feet and was cheered to the echo when he repudiated everything Tillman had said except his proposition to coin silver at the ratio of sixteen to one.

But Senator Tillman's suggestion about secession was not bad. At any rate, it was adopted later. It should have been immediately, right out of the Convention. It all depends on why you secede. South Carolina seceded to perpetuate slavery. The New England and New York Democrats seceded from their party in 1896 to save the solvency of the nation, but they were so slow about going that they almost failed of their object. And when they did start, it took an ex-Confederate or an ex-Secessionist to lead them.

Senator Hill was not happy in the way he began his speech: "I am a Democrat, and South Carolina with all her power can not drive me out of the party." He contended against any single standard, and said the United States could not attempt the unlimited coinage of silver without the aid of other nations. His main argument was bimetallism. He did not then advocate the single gold standard, as he had done in Washington a few months before, as the spokesman in the Senate of the "sound" money men.

William Jennings Bryan closed the debate for the silver

men. The first word he uttered seemed to reach the last man on the outer edge of the vast crowd. He stood right by me and I scanned him closely. He appeared taller than he really was, with a young, smooth, and kindly face, but a wild and defiant look in his eye that was not natural and I never saw afterwards. He spoke with the utmost ease, and seemed possessed of still more physical and vocal power than he was expending. That there was a charm and fascination in his oratory was manifest from the effect on his audience. Only a few refused to go along with him. He answered Senator Hill when he said, "If the gold standard is the standard of civilization, why, my friends, should we not have it? If they say bimetallism is good, but we can not have it till some nation helps us, we reply that instead of having a gold standard because England has, we shall restore bimetallism and let England have bimetallism because the United States has."

Then followed such a scene as was never witnessed in a National convention. The great majority of the vast audience had been with Mr. Bryan from the first word he uttered. Their demonstrations were unrestrained as he concluded: "You can not crucify humanity with a cross of gold and a crown of thorns of gold." Many staid gold standard people were carried off their feet. Aside from New York, New Jersey, Pennsylvania, Delaware, Massachusetts, and Connecticut, where the delegations were all gold men, every State standard except that of Indiana was planted by the Nebraska standard. Indiana had a favorite son candidate for the Presidency in the person of the chief executive of the State, Claude Matthews, but with all that, the Indiana delegates did not want Mr. Matthews nominated. For fear of giving color to their feelings, John E. Lamb and Senator Turpie held the Indiana banner in its isolated position. More than two-thirds of the States were represented among the banners that stood by the Nebraska delegation. "It nominates him," went around



the platform. I said it; Mrs. Palmer said it. "Never," said a man who had been to many National conventions. "Wait until the practical men along about midnight hear from the old man. He will pull his New York, Pennsylvania, and New England delegates out of the convention and there will be some adjustment."

Mrs. Bryan was on the platform and as her husband concluded many an eye was turned on her. It was a trying place for any woman. She bore herself well; declining to be interviewed, she withdrew with admirable deftness. When asked, "How will she do in the White House?" my answer was, "You have seen enough; judge for yourself."

Pandemonium reigned so long that the convention adjourned without voting on the platform.

The next morning as the platform was adopted the gold men in the New York, New Jersey, Massachusetts, Pennsylvania, Delaware, and Connecticut delegations sat silent. They refused to vote aye or nay. It was the greatest mistake ever made by a large body of practical men in a political convention. They should have "walked out."

Perhaps Mr. Cleveland could not at that time have led his friends to the logical conclusion to which all his acts and advice pointed. But he had the telegraph and the telephone at his command, and in the interval between Mr. Bryan's speech and the adoption of the report of the majority of the Committee on Resolutions the President of the United States should have attempted to command, or "*drive*," if you please. As soon as Henry Watterson heard of the action of the convention he sent a cable from Paris to put up an Independent gold ticket.

Whatever faults Mr. Cleveland may have possessed, he never, in anyway, either directly or indirectly, profitted by reason of his official position. I mention this, not to give color to a false rumor, but to refute unjust criticism and bear my testimony to his worth. Malignity and ignorance know no bounds. Because the cupidity of men must be

reckoned with by men in the administration of governmental affairs, is no reason for saying the latter are dishonest because the former are. Prompt action in conducting a government is sometimes necessary. Words may be and often are idle in a crisis. In order to supply the Treasury of the United States with gold, the gold reserve having been depleted before the Sherman Silver Act was repealed, President Cleveland, under authority of the Resumption Acts, sold J. P. Morgan & Company and the Rothschilds \$50,000,000 of bonds at par, and they made eight million on the deal. Then it was that the New York *World* and a string of bankers criticized the Administration for not having in the first instance offered the bonds to the public, and they supplemented their criticism with the statement that had they been given the opportunity they would have bid more than par for the bonds. The administration was not disturbed by the criticism, but was gratified by the talk of what the gentlemen would do, because it knew that before conditions became normal there would have to be more bonds put out. It soon called in its critics, and to their credit be it said, they responded. To have invited bids in the first instance would have increased the run on the Treasury, and before a dollar of gold could have been realized the country would have been on a silver basis. At the time and under the circumstances, an appeal to Mr. Morgan's pride and cupidity was Mr. Cleveland's duty.

Afterwards Mr. Morgan's vanity led him to assert that he showed Mr. Cleveland the way under the Resumption Acts to issue bonds to keep the United States Treasury on a specie basis. But the fact is, that at the Lakewood conference, February 22, 1893, President-elect Cleveland, Secretary of State (to-be) Gresham, and Secretary of the Treasury (to-be) Carlisle, canvassed this question and decided that under the Resumption Acts the Secretary of the Treasury had the power to sell bonds to get gold and that it should be done if the emergency arose.

Had the administration of Grover Cleveland been able at the outset to take up the tariff, the real issue on which Mr. Cleveland was elected, it would have formulated and passed a tariff or revenue bill that might have taken the tariff out of politics for a generation; but, as we have just shown, much of its power and practically all of its patronage were exhausted in saving the credit of the nation, in repealing the Sherman Act. The service the modest banker of Indianapolis rendered the country in the crisis should never be forgotten. For in the ultimate analysis, it was Volney T. Malott who repealed the Sherman Silver Act.

I have already adverted to the simplicity of the Cleveland household. When it came to jewelry and clothing, Mrs. Cleveland was economy itself. She never dressed as handsomely as I thought the first lady of the land should. She had but few jewels—a few diamond ornaments and pins and an ordinary little diamond necklace. The wife of General Draper of Massachusetts I had known as Miss Susie Preston of Lexington, Kentucky. She was a second wife. General Draper was then a wealthy manufacturer and a minority member of the Ways and Means Committee of the House. Mrs. Draper boasted to me at this time that she gave dinners enough to make the tariff right as far as her husband's business was concerned. She was talking about the Wilson bill—the bill that the Republicans called the Free Trade measure that destroyed the interests of the country.

The Sugar Trust was one of the interests which had a large and powerful lobby in Washington. Many members of the Senate were said to be interested in sugar stocks. My husband did not hesitate to denounce them by name.<sup>1</sup>

<sup>1</sup> March 15, 1893, Secretary Gresham wrote the following letter to Judge Allen of Springfield, Illinois:

"I have your letter of the 7th, and will inform the President what you think it would be wise for him to do at this time. I can readily understand that if the President should send such a message some people would charge that he was endeavoring to dictate to a co-ordinate branch of the government. The situation is deplorable, and I sometimes fear no tariff bill will pass this session. There are traitors in the camp, so-called Democratic Senators

Though the bill was properly drawn in the House, the interests and the high tariff Democrats in the Senate, men like Senators Gorman of Maryland and Morgan of Alabama, united with the Republicans in making it largely a protectionist measure, and hence the name Wilson-Gorman tariff. The Sugar Trust got what it desired. It is true that the bill contained many substantial additions to the free list, such as coal, wool, and certain grades of iron, raw materials for our manufacturies. Still Mr. Cleveland withheld his signature, and his reasons for not signing it were set forth in a letter to Representative Catchings of Mississippi. In this letter he said that he could not veto the bill because it contained much that was good, *but he would not sign it because "the time will come when the people's representatives and not the communism of pelf will write the people's tariff laws."*

That Henry Watterson had good ground for complaint against the Wilson Act is not to be questioned. But his criticism of Cleveland because of it, is shown to be unjust when we consider Mr. Cleveland's letter to Mr. Catchings. During the dog days of 1894 when it looked as if the interests might prevent any tariff legislation Mr. Watterson telegraphed Secretary of State Gresham: "My suggestion is, Get Congress to adjourn without any tariff legislation, then with a ringing appeal let the President call an immediate session. If he will allow me I shall have a practical proposition to make. Things could not be worse than they are. Assure Mr. Cleveland of my loyal friendship."

Friendship does not always influence the judgment and so it was Marse Henry's plan that found more favor with the President than with the Secretary of State. The latter

who are strong protectionists and desire to see the McKinley Law remain in force. This may sound incredible to you, but it is true nevertheless. The interests now at stake are stupendous, and there is danger some Senators may be approached on their mercenary side. If the session adjourns without tariff legislation being enacted, the people will conclude the Democratic Party has forfeited their confidence. Business will revive after the passage of any bill, or after it is demonstrated that no bill can pass; and if none does pass the Republicans will claim they have saved the country from free trade legislation, and that they are entitled to any credit for increased prosperity."

pressed the contest and a few days later<sup>1</sup> the Wilson bill was put in the President's hands. Long afterwards Mr. Cleveland stated in my presence that one of his mistakes was the refusal to sign that bill. He knew that I knew that Walter Q. Gresham had urged him to sign it. Since those days Mr. Watterson has made plain his "Tariff for Revenue Only." It is not free trade. Any tariff, he admits, is protection. Plainly and primarily, a tariff or customs duty is for revenue, but call it what you may, the restraints it imposes are protection. It is not surprising that the Wilson Act, passed in the midst of a panic which the tariff barons fomented and kept up as long as they could, was not a revenue producer at first. It was denounced from the stump by the Republicans as a free trade measure because it did not produce the revenue necessary to meet the expenses of the government, and yet before it was repealed it was producing a surplus; and as was stated by Speaker Joseph G. Cannon, the Republican "standpatter," in a public speech in defending the Payne-Aldrich bill, the average duties in the Payne-Aldrich bill were a trifle lower than the average duties in the Wilson-Gorman Tariff Act. Consistency is not always essential in political warfare. Mr. Cleveland's letter to Mr. Catchings refusing to sign the bill was used against it and its income tax provision.

Judge Gresham advocated the incorporation of the income tax in the Wilson Tariff Bill. To the appeals of the big men of the country he was impervious. To the objection that an income tax was a direct tax and must be apportioned, he said there was the "Hylton"<sup>2</sup> case, the case in which the first Congress put a tax on carriages; it was admitted by all to be a direct tax, yet it received the sanction of President Washington and the Supreme Court. The grounds on which the Supreme Court subsequently held the Income Tax Law unconstitutional were canvassed,

<sup>1</sup> Aug. 18, 1894.

<sup>2</sup> Hylton vs. United States, 3 Dallas 171, 1796.

and many a doubter was won over to the theory that such a tax was constitutional. "President Washington evidently was of that opinion." It was believed that Chief Justice Fuller thought such a bill would be constitutional. But it was finally decided unconstitutional by a divided court, the Chief Justice writing the opinion. When Judge Gresham was told in his sick room that the Chief Justice's opinion was very long, thirty pages in length, he said: "Fuller is in doubt. A long winded opinion by a Court usually means that. How did he get around the *Hylton* and *Springer* cases?"<sup>1</sup> The gossip was in certain of the administration circles, and Walter Q. Gresham was one of the men who advanced the theory that the Chief Justice became resentful against the administration from the time the President refused to appoint his former law partner, Judge Henry M. Shepard, one of the judges of the Circuit Court of Cook County, to a place on the United States Circuit Court bench in the Seventh Circuit. Instead, John W. Showalter was appointed to this place. Joseph Medill and Potter Palmer were very urgent in pressing Mr. Shepard's appointment.

The virulent nature of the language in the dissenting opinions, four to five with one justice changing sides on final hearing, makes it proper to refer, as I have done, to some of the things that were said in private about the Income Tax case.<sup>2</sup>

<sup>1</sup> *Springer vs. United States*, 102 U. S. 586.

<sup>2</sup> *Pollock vs. Farmers Loan and Trust Co.*, 157 U. S. 429 and 158 U. S. 601.

## CHAPTER XLVI

### BERING SEA ARBITRATION

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FUR SEAL RIGHTS ON PRIBILOF ISLANDS—BLAINE AND HARRISON NOT IN ACCORD—MR. BAYARD'S WISE COURSE OF ACTION—NEUTRAL ARBITRATORS DECIDE THE BERING SEA CASE—THE UNITED STATES DEFEATED—SECRETARY GRESHAM TAKES STEPS TO GET RID OF THE PARIS TRIBUNAL REGULATIONS.

IT was in the Department of State, during the second Cleveland administration, that the greatest public interest centered.

The coming Bering Sea arbitration, between the United States and Great Britain nominally, but really with the Dominion of Canada, over the Alaska seal fisheries, scheduled for February 23, 1893, and actually begun thirty days later, was one of the subjects Mr. Cleveland asked Judge Gresham to come to Lakewood to confer about, at the time he accepted the office of Secretary of State. In addition to conferring with Cleveland at Lakewood, my husband met our old friend, Colonel John W. Foster, in New York. Mr. Foster was then Secretary of State under President Harrison, and was the "agent of the United States," to represent, and to prepare, together with certain eminent counsel, the case of the United States before the Paris Tribunal. The questions at issue were not new to Grover Cleveland nor to Walter Q. Gresham.

The controversy came down to this. Either the Canadian pelagic sealers, among whom were many Americans, would exterminate the seals on the sea, or the American hunters—the North American Commercial Company, a California corporation and a monopoly fostered by certain

legislation of the Congress of the United States—would do so on the land.

The first pelagic sealer was a Yankee sailor who entered Bering Sea in 1876. His vessel was captured and condemned by the American government. The next time the American pelagic sealer entered Bering Sea—he showed the Canuck the way—it was under Canadian register and flying the British flag. To quote Senator Morgan before the Paris Tribunal:

The seal hunters had depopulated the Antarctic Ocean of fur seals, and had made many successful raids on the islands and coasts of Japan. Their poaching grounds had been exhausted and the hope of great profits drew them to Bering Sea. *They found governmental resistance in Japan, Russia, and the United States, but they found in Canada a government that would give countenance to their raids, and despite the best efforts of the United States and Great Britain, and of their ordinances closing Bering Sea to them, they now lie upon the north and south route of the migration of the seals, which they follow with immense fleets.*

The Bering Sea arbitration, when sifted to the bottom, shows that in 1893 and 1894 Canada was in effect an independent nation. London entered the decrees of Ottawa. Otherwise there would not have been the fiction of Canadian allegiance to the English queen.

Well do I remember the remark of the brightest English-woman I ever met, "We will never repeat the mistake we made with our American colonies."

When Mr. Gresham was in President Arthur's cabinet, I learned of the strong financial interests of the men who made up the combination called the lessees which had the contracts with the government for the exclusive right to take fur seals on the Pribilof Islands. In those days every woman knew much about seals, for sealskin cloaks were still common. About 1893 they were getting expensive, more so than in the early '80s. Now they are beyond the reach of the average woman, for the price is prohibitive.



Wherever taken, the skins were shipped to England, where they were cured, dyed, and then shipped to the big importing houses in the United States.

These strange animals appear on the rocks of the Pribilof Islands in May, give birth to their young, and after the "pups" have learned to swim, in October go back into the sea, traveling as far south as San Francisco. Then the next Spring, "with unerring instinct, one of the strangest phenomena of animal life," they not only return to those two small Pribilof Islands situated in the Bering Sea, two hundred miles from the Alaskan coast, but often to the identical rocks whence they swam. The islands take their name from a Russian fisherman, who, in 1785, after long search, finally in the fogs and mists found the breeding place of the seal. One very interesting feature of seal life, and of the greatest importance in connection with the arbitration, is the fact that during the nurturing season, the female seal, in search of food, swims from one hundred and fifty to two hundred miles from the islands and back, four hundred miles inside of two days, and then picks out her pups from ten thousand young.

Before Secretary Gresham was transferred by President Arthur from the Post-Office Department to the Treasury, in September, 1884, he brought to our library at 1405 I Street the statutes and reports of all kinds bearing on the workings of the Treasury Department. Among these were Elliott's "Reports," with their bright pictures and fascinating accounts of seal life. Henry W. Elliott of the Smithsonian Institution had spent two years in the Pribilof Islands, 1872 and 1874, and had made his detailed report of seal life, which had been translated into seven different languages. At the time of this visit the lessees had impressed on Mr. Elliott their benevolence. But theirs was the first looting in Alaska. Their attorneys had drafted the legislation Congress had passed in 1869 and 1870, which was modeled somewhat after the Russian ordinances

and continued in the Alaskan Commercial Corporation the form of the monopoly Russia had granted for forty years prior to the cession to the United States. In 1883 and 1884, the lessees were strong in public affairs. Their representatives were in the United States Senate and every Senator from the Pacific slope was their friend. They were mainly friends of Mr. Blaine, but had an anchor to windward before the convention of 1884, in that a few of their men were in Mr. Arthur's camp. One of their lobbyists was of the old school. He lived in a fine house, and his family went much in official society.

Because of the revenue involved, a fixed rental and so much per head for each seal taken, the Pribilof Islands and the lessees were under the jurisdiction of the Treasury Department. May 1, 1870, when the lease to the Alaskan Commercial Company went into effect for twenty years, the herd consisted of almost 4,700,000 seals. During the period of this lease, 1870-1890, the lessees took 1,856,224 seals, deriving therefrom a net profit of \$18,753,911.20, while the government's net profit was but \$5,264,230.08.

March 12, 1890, a new lease was executed by the United States, for twenty years from May 1, 1890. There was great competition to get this lease. One of the bidders was a party of Indianians headed by Stephen B. Elkins; another, the North American Commercial Company, the California corporation in which D. O. Mills was interested. Mr. Mills was supposed to have been interested in the Alaskan Commercial Company, but he wanted, it was said, to freeze out some of his partners in that company, hence it was that the North American Commercial Company was organized. Before the North American Company secured the contract, Elkins became a stockholder in it, joined forces with D. O. Mills, and left the Indianians out in the cold. Here was a difference in which General Harrison sided with his Indiana friends. Mr. Blaine stood by his old friends, Messrs. Elkins and Mills. When the North

American Company took possession, May 1, 1890, the seals on the islands were down to an even 1,000,000. At the expiration of its lease, May 1, 1910, the seals had been reduced to 133,000. The lessees' profits during this last period were \$4,976,574, while the government's expenses, over and above what it derived from the North American Company, were \$1,350,000; in other words, a loss of that amount.

And now for the case: In 1886 the Canadians and Yankees, under Canadian register, were decimating the herd when Charles S. Fairchild, Secretary of the Treasury, ordered the United States revenue marine cutters to make seizure of Canadian vessels found taking seals in the Bering Sea. This order was issued without the sanction of President Cleveland or of Thomas F. Bayard, Secretary of State. Of course, there was a protest by the Canadians through the British government. After a careful examination of the facts, the precedents, and the law, Mr. Bayard decided the course for the United States to pursue was to release the Canadian vessels, withdraw all claim to jurisdiction in the open sea in the North Pacific Ocean and Bering Sea beyond the three-mile limit, and endeavor by negotiations to induce the British and Canadian governments to stop pelagic sealing in the open seas.

The release of the Canadian vessels aroused the jingoes. Senators Hoar and Lodge of Massachusetts assailed Mr. Bayard bitterly for his position. But my husband believed then that Mr. Bayard was right, and he was of that opinion when he himself became Secretary of State. After the failure of the arbitration and the seal herd had been all but exterminated, Mr. Bayard's joint plan with Sir Julian Pauncefote, of an agreement to stop all killing of seals, whether on sea or land, was adopted. At this time, in 1886, Mr. Bayard was writing my husband, "I trust we shall always maintain relations of friendship and mutual confidence, and that you will never come to Washington without coming to see me."

Mr. Blaine, as Secretary of State under President Harrison, promptly reversed Mr. Bayard's policy of peace and amity, and proceeded to twist the lion's tail.

In view of the early indorsement of Secretary Bayard's plan by Mr. Gresham, his subsequent action in the Bering Sea controversy cannot be laid, as some of his critics of that time did, to ill will toward Mr. Blaine and General Harrison. On many public questions he had been opposed to Mr. Blaine from the start. Besides, Blaine and Harrison themselves were not in perfect accord in the Bering Sea controversy. Certain it is, Mr. Gresham differed from them. His opposition not only to their tariff but also to their jingo policy had led him to vote against General Harrison at the polls. Why anyone should expect him to carry out the policy he had thus emphatically condemned, I cannot understand. In striking contrast with the differences between President Harrison and Secretary of State Blaine, Walter Q. Gresham as Secretary of State was in accord with Grover Cleveland as President, and with Thomas F. Bayard, then ambassador to the Court of St. James.

Under Mr. Blaine's orders, the revenue cutter *Rush* overhauled and took possession of six or seven Canadian sealers. The first seizure was made July 11, 1889. The Canadians raised a great uproar and protest that extended from Victoria to Ottawa and thence to London. Lord Salisbury protested, and intimated that further seizures on the high seas would be resented. Public opinion, both in the United States and in England, no matter how much the Canadians and American jingoists howled, would not stand for war, so Blaine and Harrison receded and finally, February 28, 1892, a treaty of arbitration was signed and in a short time was ratified by the United States Senate.

The language of the diplomatic correspondence was:

The sole object of the negotiation is the preservation of the fur seal species for the benefit of mankind, and no consideration of advantage to any particular nation, or of benefit to any private interest, should enter into the question.

But this language did not enter into the treaty. Its absence laid the United States open to the charge, which was made before the Paris Tribunal assembled, and also before that body, that she was endeavoring to protect the seals for the sole benefit of the lessees.

Meanwhile, under a special act of Congress approved April 5, 1890, Henry W. Elliott, still connected as a naturalist with the Smithsonian Institution, was sent by Secretary of the Treasury Windom to the Pribilof Islands with plenary powers to examine again into seal life and the killing of the seals on land as well as on sea. Mr. Elliott was on the Pribilof Islands from May 20 to August 14, 1890. Notwithstanding the new lessees had protested bitterly, Secretary Windom had stopped all killing on the islands on the 30th of July. Elliott recommended that killing, both on land and sea, be stopped for a period of years. His conclusion was supported by a report of 389 pages in manuscript, with fifty-eight plates, twelve seal charts, maps of the rookeries, and two general maps.

It was September 7, 1890, when Elliott first reported to Secretary Windom. But Mr. Elliott always claimed that Mr. Blaine said then it would not do to publish his report, because its publication would enable the Canadians to say it was the killing on land that was decimating the herd. Not until 1896, under an order of Congress, was this report published.

So instead of following Mr. Elliott's report, which carried out Mr. Bayard's idea and could have been put through, Mr. Blaine was induced by Stephen B. Elkins to suggest, December 17, 1890, to Great Britain that our government would be content if the Canadian government would accept a sixty-mile zone around the Pribilof Islands within which pelagic sealing should be prohibited. A sixty-mile zone would have left Mr. Elkins' company not only free upon the land but also at sea, for we have seen that the female seal, during the nurturing season, went as far as

one hundred and fifty to two hundred miles away from the Islands. But Lord Salisbury preferred to arbitrate rather than accept any of Mr. Blaine's propositions.

The questions to be determined resolved themselves into three:

1. Did the United States have exclusive jurisdiction over the waters of Bering Sea outside of the three-mile limit from the shore?

2. Did the United States have a property interest in every seal born and bred on the Pribilof Islands? (Our contention was that they were domestic animals; the Canadian or British claim was that they were *feræ naturæ*.)

3. In the event of the adjudication being adverse to the United States on the first two questions, then the arbitrators should determine what concurrent regulations were necessary for the proper protection and preservation of the fur seal in or habitually resorting to Bering Sea.

The first proposition was Mr. Blaine's, the second was President Harrison's. They never were in accord. John W. Foster urged the second as sound. When lawyers like Senators Edmunds and George F. Hoar told Mr. Blaine that "no international court would hold with the United States on the first two," he added the third, in order to secure the ratification of the treaty by the Senate. And the presentation of the third, Mr. Foster says in his official report, was unfortunate in that it suggested to the neutral arbitrators a doubt as to the soundness of the first two claims of the United States.

May 1, 1892, John W. Foster was appointed by President Harrison agent, on behalf of the United States, to prepare the case. From the standpoint of ability and experience as a manager, a better selection than Mr. Foster could not have been made. But in handling a case in a courtroom, the actual trial of a lawsuit, Mr. Foster was without experience. Many of his American clients were closely allied, at least in sympathy, with the lessees. Since 1884 Mr. Foster

had been practising his profession of international law in Washington. Associated with him as chief counsel for the United States was Edmund J. Phelps of Vermont. Mr. Phelps had been the American minister to the Court of St. James during the first Cleveland administration, but he had not been in complete harmony with Mr. Bayard in recognizing Great Britain's right to take the seals in the open seas, that is, outside of the three-mile limit, and entering into an agreement with Great Britain whereby the taking of seals at sea, pelagic sealing, should be prohibited. To stop pelagic sealing involved stopping killing on land, on the islands, and to this Mr. Phelps was opposed. As a lawyer, Mr. Phelps's employment mainly was, both before and after this time, with interests associated with the lessees. The other American counsel, James C. Carter and F. R. Coudert, trailed Mr. Phelps. Mr. Coudert's employment was peculiar, as will appear farther on. There were lesser legal lights, one Robert Lansing, a son-in-law of Mr. Foster; also numerous clerks and so-called "experts." Our "expert naturalists" could not really qualify as such, because they were compelled to admit they were on the Islands so short a time that their testimony was valueless before the Tribunal. The Canadians kept their men there for over a year continuously.

Federal Judge H. W. Blodgett was of counsel for the United States before the Commission, and he kept Secretary of State Gresham well advised of the progress made.

When the final break between Mr. Blaine and General Harrison came and Blaine resigned as Secretary of State, June 6, 1892, Mr. Foster was made Secretary of State, but continued as agent of the United States in managing the preparation of the Bering Sea case. As Secretary of State he agreed with himself as agent as to what his compensation as agent should be. He agreed with Messrs. Phelps and Carter as to their compensation, \$10,000 each and expenses. They contemplated, and publicly they claimed, a short

hearing and a sure victory. Mr. Foster agreed with our arbitrators as to what their compensation should be, \$10,000 each. All this was set forth in orders and directions Mr. Foster put on the records of the State Department.

Great Britain, or more properly, the Dominion of Canada, was represented by the British Attorney-General and Solicitor-General, Sir Charles Russell and Sir Richard Webster, by Charles H. Tupper as agent, and by a corps of lesser lights.

The American arbitrators, Justice Harlan and Senator Morgan of Alabama, had proceeded to Paris before Judge Gresham went to Lakewood, so that Senator Morgan did not, as he desired to do before sailing, meet the incoming Secretary of State for a conference, as Mr. Cleveland had stated in his letter of February 7, 1893, to Judge Gresham.<sup>1</sup>

The arbitrators, on behalf of Great Britain, were the Right Honorable Lord Hannen, Lord of Appeals, and Sir John Thompson, Minister of Justice and Attorney-General of Canada.

In most arbitrations, the arbitrators of the parties are partisans. Such proved to be the case as to the American arbitrators, especially Senator Morgan. Neither the American nor the British arbitrators participated in the final conference that decided the case. After the open hearing was concluded, behind closed doors there was an argument before the neutral arbitrators by the American and English arbitrators.

The real judges, as Mr. Foster called them, "the neutral arbitrators," or to use the language of the treaty, "jurists of distinguished reputation in their respective countries," were three in number, and according to the treaty, were named one each by the President of France, the King of Italy, and the King of Norway and Sweden. They were Baron Alphonse de Courcel, Ambassador of France, who was made president of the Tribunal at its first meeting; Marquis Emilia, Viscompte Venosta, former Minister of

<sup>1</sup> See page 684.



Foreign Affairs and Senator of the Kingdom of Italy; and Mr. Cregor Grain, Minister of State of Norway.

After the conference with Mr. Cleveland at Lakewood, February 22, 1893, Judge Gresham met Secretary of State Foster in New York. At this New York conference with Mr. Foster, Judge Gresham frankly expressed his doubts about our ability to sustain our contention before the Paris Tribunal, but assured Mr. Foster that every aid the incoming administration could give him in managing the case would be extended him. "The issues have been made up and we must stand or fall by what you and our counsel have submitted by way of evidence and printed argument, and what you and they may do before the Tribunal."

One reason Judge Gresham gave Mr. Foster why he feared we would fail, was that while he favored the arbitration of international disputes, the United States could not expect to get the benefit of the doubt when the majority of the arbitrators were Europeans.

March 3, Mr. Foster, with many of the co-counsel, treasury agents, and "experts," sailed for Paris. On the same day President-elect Cleveland received the following letter from Mr. Phelps:

CLARENDON HOTEL, N. Y., March 2, 1893.

MY DEAR SIR:—

You will remember our conversation in respect to the engagement of Mr. Coudert as one of the counsel in the Bering Sea arbitration. In pursuance of it, Mr. Coudert has been engaged and has rendered very useful service.

It is now necessary that he should go to Paris by the steamer of the 11th instant, at the very latest, as otherwise he would not arrive in time for the trial. He has never yet received a formal authority from the State Department to act as one of the counsel. His retainer was with the assent of Mr. Foster, Secretary of State and agent of the United States in this case; but owing to certain embarrassments of the President in respect to other gentlemen, not necessary to mention, it was desired by Mr. Foster that the

formal authority to Mr. Coudert should not be issued until after the new administration came in.

It is important now, therefore, that it should be sent to him without delay, and even without waiting for the induction of Judge Gresham into the Department: Will you kindly direct whoever may be in charge of the Department on Monday next, to send such a formal letter to Mr. Coudert, as by direction of the President, simply engaging him as one of the counsel in the Bering Sea arbitration. His address is F. R. Coudert, Esq., 68 William Street, New York City.

I very much regretted being unable to reach Lakewood on Wednesday in time to see you before you left for Washington, but the situation of my affairs in Burlington, by reason of leaving here for so long an absence, was such that it was quite impossible.

As Mr. Foster had an interview with Judge Gresham here last week, I hope he may have put him in possession of all the points necessary to be referred to.

I am, sir, with much respect,

Very sincerely yours,

E. J. PHELPS.

Mr. Cleveland held the letter and turned it over to Judge Gresham, who arrived in Washington the afternoon of the 4th.

The British agent was provided with ample funds, and he, his subordinates, and the British arbitrators, all entertained lavishly during the hearing. So profuse were their expenditures that Mr. Foster recommended that the allowances to our arbitrators and counsel be increased that they might return some of the invitations that were extended to them. The allowances of the arbitrators were promptly increased as Mr. Foster recommended, and although, as we have shown, the counsel agreed to act for a stipulated sum, their allowances were also increased, although it took a deficiency appropriation bill to pay all our expenses at Paris, including the additional counsel fees.

At the first formal session of the Paris Tribunal, April 4,

1893, the British counsel asked that the agent of the United States be ordered to produce the report made by Henry W. Elliott, pursuant to an Act of Congress of April, 1890, on the subject of fur seals in Alaska. This report, as before stated, had not been published. Objecting to the right of the English government to call for this report, still the American counsel said they would produce it to be used on either side. There was no use to which the American counsel could put it, because it showed from an American source what the Canadians were contending for, that it was not pelagic killing alone that was decimating the herd, but also land killing by the lessees; and that instead of the United States desiring to preserve the seal species for the benefit of mankind, it was really standing for private interests, for Stephen B. Elkins, D. O. Mills, and the Californians of old.

The production of this report caused our counsel to recast our case, which they did at much expense and great labor. Instead of a short hearing, it was extended to weeks.

During the argument on the motion to produce the Elliott report, James C. Carter and Senator Morgan attacked Henry W. Elliott. In an open interview in the *Cleveland Plain Dealer*, Professor Elliott answered. He claimed that he had taken his report to Mr. Blaine and that Mr. Blaine had deliberately suppressed it. He said that the lessees had been violating the terms of the lease in taking on the island females and yearlings, contrary to the Federal statutes and the terms of the lease, and that the treasury agents who in 1890 were honest and believed in enforcing the lease, had been removed. This interview was reproduced in Paris, and, of course, all the neutral members of the Tribunal read it. Then many of the newspapers attacked Agent Foster, our counsel, and our arbitrators. They claimed that Mr. Foster was spending too much money in Paris, and that the government officers, including our arbitrators, who were under regulation salaries, should not

be allowed anything in addition while representing the government before the Paris Tribunal. During this time Mr. Foster wrote Secretary Gresham many letters complaining about the newspaper attacks. He said they all emanated from an employee of the State Department who was hostile to him and had been in the State Department prior to Secretary Gresham's coming. An investigation, however, developed that the employee had had nothing to do with inspiring the attack. He was absent all this time ill in bed. The newspaper man who started the story frankly asserted he had received his first information from seeing vouchers for additional payments in the Treasury Department. But who else had aided him, he refused to disclose.

That every aid was rendered Mr. Foster by the Cleveland administration is conclusive from a statement of Mr. Foster in a letter to Secretary Gresham of August 23 1893, accompanying Mr. Foster's official report:

But I cannot close without expressing to you my hearty thanks for the ready response which you have always made to my requests and recommendations as agent.

On every point we were beaten. Promptly on the claim to jurisdiction beyond the three-mile shore line and that the seals were our property because they were domestic animals. The neutrals held that we had no right to such jurisdiction and that the seals were *feræ naturæ*. It was on the regulations that the contest raged, and that we were defeated on them is manifest from the dissenting opinions of Justice Harlan and Senator Morgan.

The regulations recommended allowed pelagic sealing outside of the zone of sixty geographical miles around the Pribilof Islands. They provided for a closed season on the high seas north of the 35th degree of North latitude and eastward of the 180th degree of longitude from Greenwich from May 1 to the 31st of July. Only sailing vessels could

engage in pelagic sealing during the open season. But on these vessels the native fishermen could continue to be employed. The use of nets, explosives, and firearms of all kinds, except shotguns, was prohibited. It was to the continued use of the shotgun that Senator Morgan most strenuously objected.

The sixty-mile limit was, as we have seen, Mr. Blaine's suggestion. The Indian fisherman with his spear and unerring aim was the most deadly enemy of all to the seal, because when one seal was shot a hundred were warned away, while the Indian did his work noiselessly.

Not only were we defeated on every proposition, but Secretary of State Gresham thought the positions of our counsel and arbitrators reflected but little credit on the American bar and judiciary.

This appeared when, in response to the question of Baron de Courcel why, under that clause of the treaty which authorized the arbitration to determine what concurrent regulations were necessary for the proper protection and preservation of the fur seals at or habitually resorting to Bering Sea, a closed season on both land and sea could not be ordered, Messrs. Phelps, Carter, and Coudert asserted that under the treaty of arbitration the arbitrators were powerless to suggest regulations to stay the slaughter on land.

When the evidence showed that any regulations short of a prohibition of pelagic sealing would result in the total destruction of the seal herd, and our counsel and arbitrators urged that the regulations should totally prohibit the taking of seals at sea, Canadian Arbitrator Sir John Thompson said that if the treaty as the American counsel contended did not contemplate a closed season on land, it could not possibly have been contemplated that the Canadian fishermen should be excluded from the sea, and he agreed with them that regulation was not prohibition.

Accepting this interpretation of the treaty as he was forced to do, although he said it was a reflection on the

intelligence of President Harrison, Secretary of State Blaine and the United States Senate, in unanimously ratifying it, Justice Harlan proposed to adjourn the Tribunal without a decision, and pending the adjournment let the two "high contracting parties" so amend the treaty that the Tribunal would have the power, if it appeared necessary to preserve the seals, entirely to prohibit pelagic sealing. But Justice Harlan said the United States would never consent to vesting in any arbitral tribunal the power to stop the killing of the seals on the islands; that would be an invasion of her sovereignty. The language of the diplomatic correspondence as we have quoted it certainly contemplated arresting the slaughter on the islands.

Instead of adjourning, the neutral arbitrators deemed it their duty to decide as best they could with what was before them. They held that the power to regulate the taking of the seals in the open sea did not comprehend the power to prohibit.

Then the Tribunal, going entirely outside of its province, as Secretary of State Gresham said, handed Justice Harlan and the United States this poser. It recommended that by a new treaty to be negotiated by the two powers, all killing, both on land and sea, be prohibited for a term of years. Beaten on the regulations for taking seals in the open seas, Secretary of State Gresham said to our arbitrators and counsel: "We cannot ask Great Britain to restrain the Canadians so long as the legislation we have on the statute books permits our people to slaughter or exterminate the seals on land." Later it will appear how he proposed the only remedy, that of the repeal of the legislation of 1869-1870.

After the hearing was over, Messrs. Carter, Phelps, and Coudert said the case had been badly made up and badly prepared, and they differed amongst themselves as to what had been done and what should be done. But in true lawyer style, they united in cursing the court. The responsibility of defeat, Agent Foster said was not his!

In his autobiography Mr. Foster says Judge Gresham was no diplomat. Possibly he is correct. For after acknowledging in his official report our defeat on every point, Mr. Foster joined our counsel and arbitrators in publicly proclaiming we had won a victory. Mr. Phelps and Mr. Lansing, Mr. Foster's son-in-law, were particularly insistent on this; also Senator Morgan, although he wrote Secretary Gresham on August 28 that we would be defeated, not only on our claim of property in the seals and jurisdiction beyond the three-mile line, but also on the proposed regulations. This was in connection with Justice Harlan's plan to force an adjournment of the hearing, that the treaty which he said had been wrongly drafted might be amended — in other words, escape the oncoming verdict. Secretary of State Gresham believed in making a practical application of the doctrine — even if it be the first — “that there is such a thing as international morality.” So no sanction was given to the proposition to break up the hearing; and, in his answer to Mr. Foster's claim that we had won a victory, he wrote on September 3:

I do not believe it is right to seek to make the impression that we succeeded in our contentions before the Tribunal, for we did not. The decision having been adverse to our claim, the arbitrators then prescribed regulations for the preservation of the seal — not, however, as our property.

The Paris Tribunal decided that we were liable for the seizures of the Canadian vessels in Bering Sea in 1886 and 1890, but left the amount of damages to be adjusted by the high contracting parties. Secretary of State Gresham and Sir Julian Pauncefoot agreed on \$425,000 as the amount. Congress, under the lead of Senator Morgan and the Republican jingoists, refused to sanction the settlement. Instead, a joint commission met at Vancouver, heard evidence, and awarded the Canadians \$473,000, which we paid, and also a big bill of costs.

That Senator Morgan was an unfit man as an arbitrator

in any controversy is manifest when it is considered that in the beginning of his argument behind closed doors and before the neutral arbitrators had made the regulations they recommended, he said that the United States would not be bound by these regulations if made. And he certainly afterwards did his best to prevent our observing them. A professed Democrat, Senator Morgan always stood for privilege. In a letter of May 29, 1894, from London, Mr. Bayard said of him:

Mr. Morgan's duplicity and eccentricity as related in your letters are but repetitions of what I learned by prior experience. Brilliant often, and remarkably inventive, his judgment is frequently unsound and his nature utterly unreliable. I cannot recall a single important service he has rendered his country or his party, and in many cases he has proposed action that would have been disastrous to both if he had succeeded. Mr. Cleveland knew my opinion of him during his first administration.

The regulations were to be enforced by concurrent action. In other words, the United States was not given the power outside of her territorial limits—three miles from the shore line—to compel the either Canadian or the Englishman to obey the regulations prescribed by the Tribunal and to be adopted by the respective governments.

Because Secretary Gresham would not sanction, without authority from the British government, our revenue cutters seizing the Canadian fishermen—Senator Morgan and F. R. Coudert urged this—he was denounced as truckling to Great Britain. Senator Morgan and Mr. Coudert took this position because they said it would open up the case again. But the Secretary of State rejected both their reasoning and their conclusion.

The bill for carrying out the award on our part, which Secretary Gresham drew, Senator Morgan said was admirable, but as chairman of the Committee on Foreign Affairs of the United States Senate he was for resorting to all kinds of duress to force Great Britain to agree to a closed season,



to modify the regulations, and to authorize the United States to seize English and Canadian vessels in Bering Sea. He threatened to repeal the Clayton-Bulwer treaty; that is, he induced Senator Dolph of Oregon to introduce a resolution to that effect.

Early in September, 1893, Secretary of State Gresham took up with Sir Julian Pauncefote, who was then in Washington, the recommendations prescribed by the Paris Tribunal, in order to secure their modification, a new treaty, or their joint enforcement. The claim being made that Sir Julian was making delay, the whole matter was referred to Mr. Bayard that he might get a prompt agreement with the British government. It was at this time that Mr. Bayard suggested the employment of Professor John Bassett Moore, and the British government did not want to recognize the Canadians in the negotiations, but did not dare to say so. Accordingly, Mr. Bayard was advised that the American government would not agree that the Canadians should participate in the conference. By December, Mr. Bayard wrote that he must come to Washington for a conference with the Secretary of State and Mr. Cleveland. He came, conferred, and returned. But, excluded from the conference, the Canadians, among whom Senator Morgan said that there were a lot of Yankees, as there were, controlled the situation. Great Britain was willing to come to any terms we asked, but she could not agree to a closed season at sea because the Canadians said it would redound only to the benefit of the North American Commercial Company, while the actual regulations recommended and to be enforced, the Canadians said, were good enough for them and meanwhile they were getting ready for the greatest catch ever.

As had been predicted, the Canadians took more seals by twenty thousand in 1894 than ever before. Then in November, 1894, Walter Q. Gresham set about getting rid of the award and regulations of the Paris Tribunal.

In counsel with Professor Elliott, Congressman Nelson Dingley, W. L. Wilson, of the Ways and Means Committee of the House, ex-Speaker Thomas B. Reed, and James B. McCreary, the chairman of the Foreign Affairs Committee of the House, the following steps were taken:

December 11, 1894, Mr. Dingley introduced a resolution calling on the Secretary of the Treasury to show how the regulations of the Bering Sea Commission had operated during the season of 1894, and in support of the resolution he quoted the statement of Messrs. Foster, Phelps, Carter, and Coudert of August and September, 1893, that the regulations would prove effective, and a letter of Henry W. Elliott of December 10, 1894, stating that the slaughter in 1894 had been greater than ever before, and that if the regulations were continued it would be only a short period of years until the seals were exterminated. On January 23, on the coming in of the report from the Secretary of the Treasury, Mr. Dingley said this report showed that "the Paris regulations of the Alaska seal fisheries have been a flat failure." Further, he said, "If the regulations continue in effect three or five years longer, the seal herd will be exterminated and the United States will lose its revenue from the annual taking of \$10,000,000 worth of property." Better that this \$10,000,000 worth of property should be seized at once by the United States and converted into cash. Therefore Mr. Dingley introduced a bill to repeal the legislation of 1868, 1869, and 1870, which authorized the leasing of the right to take the seals on the islands, and directed the Secretary of the Treasury to take, with all expedition possible, every seal on the island and convert the skins into cash, *but with this proviso*:

The President may by proclamation suspend the execution of this act if Great Britain shall have determined to cooperate with the United States in such measures as, in the judgment of the President, will prevent the extermination of the Alaskan seal herds.

Big "Brainy" Tom Reed, as he was called, supported Mr. Dingley's bill. Speaking of the regulations, he said, "We are paying a large sum of money annually to enable the Canadian sealers to do their work more effectively."

This bill went through the House, but its passage was delayed in the Senate until the session ended, March 4, 1895. In the Senate, privilege was then strong. Senator Morgan was opposed to the new legislation and Stephen B. Elkins was for standing by the Acts of 1869 and 1870. Had Secretary Gresham lived, he would have gotten the bill through the Senate. It was one of the things he was planning when his last sickness came on him. Again in 1896 the bill went through the House but not the Senate. In 1910 the lease expired by limitation, and then the private interest lapsed. The seal herd was by that year reduced to 133,000. Then the United States was able to do what Mr. Bayard and Walter Q. Gresham had advocated, namely, secure a treaty with Great Britain—or rather, Canada—that stopped the killing of seals on both land and sea for a long term of years.

## CHAPTER XLVII

### HAWAII

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HOUSE BILL PASSED REPEALING ENFORCEMENT ACTS AND OTHER FEDERAL STATUTES—REVOLT IN HAWAII—INTERFERENCE WITH NATIVE GOVERNMENT PROHIBITED—ANNEXATION TREATY TRANSMITTED AND WITHDRAWN—QUEEN REFUSES CONDITIONAL RESTORATION—FINALLY ACCEDES TO AMNESTY—CONDEMNATION OF PROVISIONAL GOVERNMENT—UNITED STATES ADOPTS POLICY OF NON-INTERVENTION—GRESHAM'S STATESMANSHIP—FIRST TO STAND FOR THE RIGHTS OF THE LITTLE NATION.

IT was the Hawaiian policy of the Cleveland administration that brought down on my husband the greatest criticism of the Republicans. This criticism involved them in confusion and contradiction, for it required them to assert what many finally on the floor of the House and Senate shrank from doing, "that none but rich men, none but white men, none but Anglo-Saxon white men, are entitled to life, liberty, and the pursuit of happiness."

Conscious of his own strength and that of the American people, Secretary of State Gresham insisted on taking the moral position that "Right and Justice" should control the greatest power on earth in its international relations, in opposition to the narrow technical rules which preserved to the wrong-doer the advantages his fraud and cunning had gained for him or it, to expediency, and to the policies of conquest and imperialism that Mr. Blaine had inaugurated and General Harrison for a time had followed and finally most actively opposed. If my husband was actuated only by resentment towards President Harrison, the Republican leaders, and the Republican party, he had the satisfaction

of knowing that he embarrassed them greatly and that he exposed much of their cant and hypocrisy about a free ballot and a fair count. Never since the debate on what was done in Hawaii in 1892 and 1893, and the repeal of the "Enforcement Acts," has there been Republican complaint about suppression of the negro vote in the South. "The South" to a man, except Senator Morgan, supported the Cleveland Hawaiian policy. The ex-Confederates like General "Joe" Wheeler, as he was universally called, were cordial and unqualified in their proffers of support. "Right off the reel," the *News and Courier* of Charleston, South Carolina, was in the breach. In an editorial on "Carpet Baggers" it said, "American interests is the cry now: 'Republican interests' in the South was the cry then. The '*unspeakably degraded and dissolute Liliuokalani*' is not good enough for Carpet Baggers in Hawaii; the unspeakably degraded and dissolute negro statesmen were good enough for '*nearly all the respectability, intelligence, wealth, and civilization in the South.*'"

The Hawaiian discussion passed House Bill No. 2133, repealing the Federal statutes authorizing the appointment of deputy United States marshals and supervisors, and the statutes known as the Enforcement Acts (already discussed)<sup>1</sup> and designed to control elections in the South. Under the Enforcement Acts, Democrats had been convicted in Baltimore, Cincinnati, and Indiana, but never a Republican. When the Dudley "Blocks of Five" case arose, it did not apply. Senator George F. Hoar of Massachusetts was one of the Republican senators who had aided in blocking the Dudley prosecution. In the debate on House Bill No. 2133, he wailed, "I am now one of the five men in Congress who voted for this legislation. The Democrats talk about Hawaii, the New England Puritans, and the Hartford Convention—events of two or three hundred years ago—when we refer to the wrongs of the negroes of the South."

<sup>1</sup>See Chapter XXX.

Henry M. Teller, then a Republican senator from Colorado, who had been in the Arthur cabinet with my husband and was one of his strongest supporters in 1888, so ardent a silver man that he afterwards left the Republican party in 1896, said that at first it was a question in the Senate as to who was responsible for the crux of the Hawaiian policy, the attempt to restore Liliuokalani, the Secretary of State or the President, but later he said that they were satisfied Gresham was the man. All doubt as to this is removed by the letter of Attorney-General Richard A. Olney of October 9, 1893. While agreeing with "*the sound morality of your proposition*," the policy of the course advised was questioned. If the question of expediency is omitted, a clear, legal, constitutional and most human exposition of the situation is this letter.<sup>1</sup> Of Mr. Cleveland's special message in favor of the restoration of the queen, the lawyers and Gresham critics said that while it showed all of the Cleveland force, it revealed the polish and logic of the man who had long spoken from the *equity* side of the court.

Sunday, January 29, 1893, as we have seen, was a red-letter day in my life. It was the day Don M. Dickinson says I made him so uncomfortable when he came to our house bearing Mr. Cleveland's special message requesting my husband to become Secretary of State.

The newspapers of that day contained the first mention of my husband's name in connection with the State Department in the incoming administration. They said that, the day before, Henry Watterson was in town and had spent a long time with Judge Gresham.

But the startling and heavy headlines were, "Revolt in Hawaii." While the conference went on in the library, I endeavored to divert my mind by reading about the landing the day before at San Francisco of the commissioners from the provisional government of Hawaii, and their haste to get on to Washington. The papers had maps and pictures

<sup>1</sup> See Appendix C for this letter in full.

of tropical life. They told how the queen had been deposed. In order to prevent bloodshed, she had yielded to the superior forces of the United States of America when Minister Plenipotentiary John L. Stevens had caused United States troops to be landed at Honolulu and declared he would support the provisional government. A woman in trouble, my husband would certainly side with her against the power, greed, and lust of man.

The next morning the *Chicago Tribune* was out for annexation and Hawaii as a State, and said Blaine wanted the Hawaiian Islands, and that, as far back as when he was Secretary of State in President Garfield's cabinet, he had instructed Mr. Stevens—then, as now, our accredited minister there—“to get them.”

Immediately the press teemed with the question of annexation and of the United States adopting a colonial policy. And against both, my husband promptly took his position. Interviews with members of Congress and the Senate showed much diversity of sentiment. In the House the majority was clearly adverse if not noncommittal. Ex-Speaker Thomas B. Reed was in the latter class. James H. Blount of Georgia, chairman of the Foreign Relations Committee of the House, refused to be interviewed. Senator John T. Morgan of Alabama, chairman of the Committee on Foreign Affairs of the Senate, was for annexation.

Meanwhile the Hawaiian commissioners, five in number—three of whom were born on the Islands, the descendants of missionaries, and two British subjects—were crossing the country. They passed through Chicago February 2, giving interviews claiming that President Harrison and also President-elect Cleveland favored annexation. Cleveland in an interview in New York said, “I have not expressed an opinion on the question of annexation, and if I had an opinion I do not consider that it would be proper for me to express it at the present time.”

January 30, Senator William E. Chandler by resolution

requested the President to lay before Congress, both Houses, for ratification, any treaty he might make. This, it was given out, was to prevent action by the Senate behind closed doors.

Speaking of his resolution and of annexation, on January 31, Senator Chandler said: "The United States government has never shown any disposition to destroy the native government of Hawaii. On the contrary, it has always maintained such government and had attempted to keep in power the existing dynasty. But at the same time there had been a feeling that if the native government should fail, an American solution would be found for the difficulties on the Islands. And if it should appear that a stable, independent government could not be maintained and that the support of any foreign government should be required, then the sentiment was that the United States would be willing and desirous to annex the Islands."

Senator Chandler's wife was a daughter of John P. Hale. One day, at 1405 I Street, after one of President Arthur's cabinet meetings, my husband and Mr. Chandler came in to luncheon. After jokes and some general conversation, I heard them discussing all the "men and measures" of the time and not always in harmony. My husband suddenly and with much seriousness and directness said, "Chandler, had I been old enough I would have voted for John P. Hale; his treatment afterwards by the Republicans was infamous." Mr. Chandler choked up and the conversation switched to a less serious subject. Not long after that an article appeared in one of the magazines by Secretary of the Navy W. E. Chandler, in which Postmaster-General Gresham was credited with the youthful indiscretion of having served time on a branch of the "Underground Railroad."

"Bill" Chandler, as he had been universally spoken of until Mr. Arthur invited him to become Secretary of the Navy, had come to Washington at the close of the war as



a *protégé* of Mr. Blaine. He first had charge of litigation for the Navy Department. A graduate of the Harvard Law School, he was a thoroughly trained lawyer. He had practised in New Hampshire, his native State, served in its legislature, and after establishing his law office in Washington, served for years as the New Hampshire member of the Republican National Committee. His virile, incisive tongue and pen and bitter partisanship made him many enemies. When President Garfield sent his name to the Senate as Solicitor-General, senators like Edmunds, Hoar, Dawes, and "John Logan," as Mr. Chandler always spoke of General Logan, united with Senator Conkling in preventing his confirmation. The only dissentient voice in the newspapers, whether Republican or Democratic, in announcing the result of the election of 1876, that Tilden had been elected, was that of "Bill" Chandler, the secretary of the Republican National Committee. Mr. Chandler declared that the States of Florida, Louisiana, and South Carolina had honestly voted for Hayes, who would receive their electoral votes, although on the face of the returns Tilden had a popular majority in each State. Then "returning boards," "visiting statesmen," President Grant and his army, and an Electoral Commission created by a special act of Congress, made good "Bill" Chandler's claim, a claim I have heard my husband say to him should never have been made or sustained. Then he would chuckle and laugh. But with all his partisanship, William E. Chandler was a broad man. As his resolution and the remarks we have quoted indicate, he was no jingoist and never was he an exploiter of the weak or inferior races that men even in New England might thereby make money. Neither was he ever a critic of Secretary Gresham and the Cleveland administration for any phase of the Hawaiian policy, nor did he raise his voice in defense of Minister John L. Stevens and the Blaine policy of "grab" in Hawaii. Indeed, he lent a helping hand at one stage of the contest, as will appear

a little later on. And his offer to Secretary Gresham to champion on the floor of the Senate certain measures of the State Department, both he and my husband afterwards concluded it would not be wise to have him do for fear of arousing the jealousy or hostility of certain Democrats. Certain it is that Senator Chandler's words of caution in his resolution and remarks of January 31 were unheeded.

February 3, the commissioners of the provisional government of the Hawaiian Islands arrived in Washington. February 4 they had their first meeting with Secretary of State Foster. Then, on February 14, the treaty of annexation between the United States and the commissioners of the provisional government of the Hawaiian Islands, having in the meantime been negotiated, was transmitted by President Harrison to the United States Senate.

This haste on the part of Secretary of State Foster when he was up to his ears recasting our case for the arbitration with Great Britain about the Alaskan fur seals, although Senator Hoar did not state it that way, was one of the subjects of the conference between Cleveland and Gresham at Lakewood, February 22, 1893. At this conference the letter of the Hawaiian queen, of January 19, to President Harrison, which he made public February 18, in which the queen asked for delay that her side might be heard, and the queen's letter of the same date to Mr. Cleveland, were also considered. In her letter to Mr. Cleveland, the queen asserted that the provisional government had the sanction of neither a popular revolution nor suffrage.

March 7, 1893, President Cleveland withdrew, as he lawfully could, the treaty of annexation from the Senate. Immediately there was great criticism by the Republicans and much interest manifested by the people and the press. My husband advised Mr. Cleveland to send a special commissioner to Honolulu at once to get all "the facts."

So on the 11th day of March, 1893, Hon. James H. Blount, a former member of Congress from Georgia, and

late chairman of the Committee of Foreign Affairs in the House, was appointed a special commissioner of the President to visit the Hawaiian Islands with a view to obtaining the fullest possible information in regard to the condition of affairs in the Islands, and especially data as to the revolution or so-called revolution which led to the overthrow of the queen's government. He was given paramount authority over the diplomatic and naval officers in the Islands, and was particularly instructed that while the United States troops could be landed to protect Americans and their property, they could not be used for any other purpose; and that while the United States would not interfere in the domestic affairs of Hawaii, neither would it allow any other nation to do so.

Again there was great criticism in the press and among the Republicans, that the President and the Secretary of State had usurped powers not granted them by the Constitution, in appointing a special commissioner to investigate the affairs of another country without the consent of the Senate. These criticisms were answered by showing that even as far back as Washington's time this had been done. An even hundred precedents were furnished by the State Department for the appointment by the President of a special commissioner to visit a foreign country without the advice and consent of the Senate, and since that debate the practice has never been questioned.

The criticisms broke forth afresh when word came that Commissioner Blount had ordered the American flag hauled down from the government buildings in Honolulu, and had sent the American sailors and marines back on board of the *Boston*. Quick was the answer: The flag had been hoisted as part of Minister Stevens's scheme of a protectorate which he had declared over the provisional government but which President Harrison had promptly disowned as soon as he heard of it. Why, then, should the flag stay up?

In due time Mr. Blount made his report, accompanying

it with the evidence he had taken on his visit to the Islands. From this report the Secretary of State culled the facts and on it he based his recommendation to the President. This letter, and the instructions to our minister to the Hawaiian Islands to restore the Hawaiian queen to her throne because she had been wrongfully dethroned, follows:

DEPARTMENT OF STATE, WASHINGTON, D. C.,

October 18, 1893.

THE PRESIDENT:

The full and impartial reports submitted by the Honorable James H. Blount, your special commissioner to the Hawaiian Islands, establishing the following facts:

Queen Liliuokalani announced her intention on Saturday, January 14, 1893, to proclaim a new constitution, but the opposition of her ministers and others induced her speedily to change her purpose and make public announcement of that fact.

At a meeting in Honolulu, late on the afternoon of that day, a so-called Committee of Public Safety, consisting of thirteen men, being all or nearly all who were present, was appointed to consider the situation and devise ways and means for the maintenance of the public peace and the protection of life and property, "and at a meeting of this committee on the 15th, or the forenoon of the 16th of January, it was resolved amongst other things that a provisional government be created to exist until terms of union with the United States of America have been negotiated and agreed upon." At a mass meeting which assembled at 2 P. M. on the last named day, the queen and her supporters were condemned and denounced, and the committee was continued and all its acts approved.

Later the same afternoon the committee addressed a letter to John L. Stevens, the American minister at Honolulu, stating that the lives and property of the people were in peril and appealing to him and the United States forces at his command for assistance. This communication concluded: "We are unable to protect ourselves without aid, and therefore hope for the protection of the United States forces." On receipt of this letter Mr. Stevens requested Captain Wiltse, commander of the U. S. S. *Boston*, to land a force for the protection of the United States legation,

United States consulate, and to secure the safety of American life and property. The well-armed troops, accompanied by two gatling guns, were promptly landed and marched through the quiet streets of Honolulu to a public hall, previously secured by Mr. Stevens for their accommodation. This hall was just across the street from the government building, and in plain view of the queen's palace. The reason for thus locating the military will presently appear. The governor of the island immediately addressed to Mr. Stevens a communication protesting against the act as an unwarranted invasion of Hawaiian soil and reminding him that the proper authorities had never denied permission to the naval forces of the United States to land for drill or any other proper purpose.

About the same time the queen's Minister of Foreign Affairs sent a note to Mr. Stevens asking why the troops had been landed and informing him that the proper authorities were able and willing to afford full protection to the American legation and all American interests in Honolulu. Only evasive replies were sent to these communications.

While there were no manifestations of excitement or alarm in the city, and the people were ignorant of the contemplated movement, the committee entered the government building, after first ascertaining that it was unguarded, and read a proclamation declaring that the existing government was overthrown and a provisional government established in its place, to exist until terms of union with the United States of America have been negotiated and agreed upon. No audience was present when the proclamation was read, but during the reading forty or fifty men, some of them indifferently armed, entered the room. The executive and advisory councils mentioned in the proclamation at once addressed a communication to Mr. Stevens, informing him that the monarchy had been abrogated and a provisional government established. This communication concluded:

"Such provisional government has been proclaimed, is now in possession of the government department buildings, the archives, and the treasury, and is in control of the city. We hereby request that you will, on behalf of the United States, recognize it as the existing *de facto* government of the Hawaiian Islands and afford to it the moral support of the government, and, if

necessary, the support of American troops to assist in preserving the public peace."

On account of this communication, Mr. Stevens immediately recognized the new government, and, in a letter addressed to Sanford B. Dole, the President, informed him that he had done so. Mr. Dole replied:

*"Government Building, Honolulu,  
January 17, 1893.*

"Sir:—I acknowledge receipt of your valued communications of this day, recognizing the Hawaiian provisional government, and express deep appreciation of the same.

"We have conferred with the ministers of the late government, and have made demand upon the marshal to surrender the station house. We are not actually yet in possession of the station house but as night is approaching and our forces may be insufficient to maintain order, we request the immediate support of the United States forces and would request that the commander of the United States forces take command of our military forces, so that they may act together for the protection of the city.

"Respectfully yours,

*"Sanford B. Dole,*

*His Excellency John L. Stevens, "Chairman Executive Council."  
United States Minister Resident.*

Note of Mr. Stevens at the end of the above communication:

"The above request not complied with. *Stevens.*"

The station house was occupied by a well-armed force, under the command of a resolute, capable officer. The same afternoon the queen, her ministers, representatives of the provisional government, and others held a conference at the palace. Refusing to recognize the new authority or surrender to it, she was informed that the provisional government had the support of the American minister, and, if necessary, would be maintained by the military force of the United States then present; that any demonstration on her part would precipitate a conflict with that force; that she could not, with hope of success, engage in war with the United States, and that resistance would result in a useless sacrifice of life. Mr. Damon, one of the chief leaders of the movement, and afterwards vice-president of the provisional government, informed

the queen that she could surrender under protest and her case would be considered later at Washington. Believing that, under the circumstances, submission was duty, and that her case would be fairly considered by the President of the United States, the queen finally yielded and sent to the provisional government the paper, which reads:

"I, Liliuokalani, by the grace of God and under the constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the constitutional government of the Hawaiian Kingdom by certain persons claiming to have established a provisional government of and for this kingdom.

"That I yield to the superior force of the United States of America, whose minister plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the provisional government.

"Now to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said forces, yield my authority until such time as the government of the United States shall, upon the facts being presented to it, undo the action of its representative and reinstate me and the authority which I claim as the constitutional sovereign of the Hawaiian Islands."

When this paper was prepared at the conclusion of the conference, and signed by the queen and her ministers, a number of persons, including one or more representatives of the provisional government, who were still present and understood its contents, by their silence at least acquiesced in its statements, and, when it was carried to President Dole, he indorsed upon it, "Received from the hands of the late cabinet this 17th day of January, 1893," without challenging the truth of any of its assertions. Indeed, it was not claimed on the 17th day of January, or for some time thereafter, by any of the designated officers of the provisional government or any annexationist that the queen surrendered otherwise than as stated in her protest.

In his dispatch to Mr. Foster of January 18, describing the so-called revolution, Mr. Stevens says:

"The Committee of Public Safety forthwith took possession of the government buildings, archives, and treasury, and installed

the provisional government at the head of the respective departments. This being accomplished fact, I promptly recognized the provisional government as the *de facto* government of the Hawaiian Islands."

In Secretary Foster's communication of February 15 to the President, laying before him the treaty of annexation with a view to obtaining the advice and consent of the Senate thereto, he says:

"At the time the provisional government took possession of the government building no troops or officers of the United States were present or took any part whatever in the proceedings. No public recognition was accorded to the provisional government by the United States minister until after the queen's abdication, and when they were in effective possession of the government building, the archives, the treasury, the barracks, the police station, and all the potential machinery of the government."

Similar language is found in an official letter addressed to Secretary Foster on February 3 by the special commissioners sent to Washington by the provisional government to negotiate a treaty of annexation.

These statements are utterly at variance with the evidence, documentary and oral, contained in Mr. Blount's reports. They are contradicted by declarations and letters of President Dole and other annexationists and by Mr. Stevens's own verbal admissions to Mr. Blount. The provisional government was recognized when it had little other than a paper existence, and when the legitimate government was in full possession and control of the palace, the barracks, and the police station. Mr. Stevens's well-known hostility and the threatening presence of the force landed from the *Boston* was all that could then have excited serious apprehension in the minds of the queen, her officers, and loyal supporters.

It is fair to say that Secretary Foster's statements were based upon information which he had received from Mr. Stevens and the special commissioners, but I am unable to see that they were deceived. The troops were landed, not to protect American life and property, but to aid in overthrowing the existing government. Their very presence implied coercive measures against it.

In a statement given to Mr. Blount by Admiral Skerrett, the ranking naval officer at Honolulu, he says:



"If the troops were landed simply to protect American citizens and interests, they were badly stationed in Arion Hall, but if the intention was to aid the provisional government they were wisely stationed."

This hall was so situated that the troops in it easily commanded the government building, and the proclamation was read under the protection of American guns. At an early stage of the movement, if not at the beginning, Mr. Stevens promised the annexationists that as soon as they obtained possession of the government building and there read a proclamation of the character above referred to, he would at once recognize them as the *de facto* government, and support them by landing a force from our warship then in the harbor, and he kept the promise. This assurance was the inspiration of the movement, and without it the annexationists would not have exposed themselves to the consequences of failure. They relied upon no military force of their own, for they had none worthy of the name. The provisional government was established by the action of the American minister and the presence of the troops landed from the *Boston* and its continued existence is due to the belief of the Hawaiians that if they made an effort to overthrow it, they would encounter the armed forces of the United States.

The earnest appeals to the American minister for military protection by the officers of that government, after it had been recognized, show the utter absurdity of the claim that it was established by a successful revolution of the people of the Islands. Those appeals were a confession by the men who made them of their weakness and timidity. Courageous men, conscious of their strength and the justice of their cause, do not thus act. It is not now claimed that a majority of the people, having the right to vote under the constitution of 1887, ever favored the existing authority or annexation to this or any other country. They earnestly desire that the government of their choice shall be restored and its independence respected.

Mr. Blount states that while at Honolulu he did not meet a single annexationist who expressed willingness to submit the question to a vote of the people, nor did he talk with one on that subject who did not insist that if the Islands were annexed suffrage should be so restricted as to give complete control to foreigners

or whites. Representative annexationists have repeatedly made similar statements to the undersigned.

The government of Hawaii surrendered its authority under a threat of war, until such time only as the government of the United States, upon the facts being presented to it, should reinstate the constitutional sovereign, and the provisional government was created, to exist until terms of union with the United States of America have been negotiated and agreed upon. A careful consideration of the facts will, I think, convince you that the treaty which was withdrawn from the Senate for further consideration should not be resubmitted for its action thereon.

Should not the great wrong done to a feeble but independent State by an abuse of the authority of the United States be undone by restoring the legitimate government? Anything short of that will not, I respectfully submit, satisfy the demands of justice.

Can the United States consistently insist that other nations shall respect the independence of Hawaii while not respecting it themselves? Our government was the first to recognize the independence of the Islands and it should be the last to acquire sovereignty over them by force and fraud.

Respectfully submitted,

W. Q. GRESHAM.

The instructions to Albert S. Willis—our minister to Honolulu, who was just starting—Judge Landis, who was then private secretary to the Secretary of State, says were dictated without a break, and, when transcribed in long-hand, did not require a verbal change. They were drawn immediately following a cabinet meeting at which it had been decided to make public the preceding letter of the Secretary of State to the President. The instructions to Minister Willis did not come out until later.

*(Confidential)*

DEPARTMENT OF STATE, WASHINGTON, D. C.

October 18, 1893.

SIR:—Supplementing the general instructions which you have received with regard to your official duties, it is necessary to

communicate to you, in confidence, special instructions for your guidance in so far as concerns the relation of the government of the United States toward the *de facto* government of the Hawaiian Islands.

The President deemed it his duty to withdraw from the Senate the treaty of annexation which has been signed by the Secretary of State and the agents of the provisional government, and to dispatch a trusted representative to Hawaii to investigate impartially the causes of the so-called revolution and ascertain and report the true situation in those islands. This information was needed the better to enable the President to discharge a delicate and important public duty.

The instructions given to Mr. Blount, of which you are furnished with a copy, point out a line of conduct to be observed by him in his official and personal relations on the Islands, by which you will be guided so far as they are applicable and not inconsistent with what is herein contained.

It remains to acquaint you with the President's conclusions upon the facts embodied in Mr. Blount's reports and to direct your course in accordance therewith.

The provisional government was not established by the Hawaiian people, or with their consent or acquiescence, nor has it since existed with their consent. The queen refused to surrender her powers to the provisional government until convinced that the minister of the United States had recognized it as the *de facto* authority, and would support and defend it with the military force of the United States, and that resistance would precipitate a bloody conflict with that force. She was advised and assured by her ministers and by leaders of the movement for the overthrow of her government, that if she surrendered under protest her case would afterwards be fairly considered by the President of the United States. The queen finally wisely yielded to the armed forces of the United States then quartered in Honolulu, relying upon the good faith and honor of the President, when informed of what had occurred, to undo the action of the minister and reinstate her and the authority which she claimed as the constitutional sovereign of the Hawaiian Islands.

After the patient examination of Mr. Blount's reports, the President is satisfied that the movement against the queen, if

not instigated, was encouraged and supported by the representative of this government at Honolulu; that he promised in advance to aid her enemies in an effort to overthrow the Hawaiian government and set up by force a new government in its place; and that he kept his promise by causing a detachment of troops to be landed from the *Boston* on the 16th of January, and by recognizing the provisional government the next day when it was too feeble to defend itself and while the constitutional government was able successfully to maintain its authority against any threatening force other than that of the United States already landed.

The President has therefore determined that he will not send back to the Senate for its action thereon the treaty which he withdrew from that body for further consideration on the 9th day of March last.

On your arrival at Honolulu you will take advantage of an early opportunity to inform the queen of this determination, making known to her the President's sincere regret that the reprehensible conduct of the American minister and the unauthorized presence on land of a military force of the United States obliged her to surrender her sovereignty, for the time being, and rely on the justice of this government to undo the flagrant wrong.

You will, however, at the same time inform the queen that, when reinstated, the President expects that she will pursue a magnanimous course by granting full amnesty to all who participated in the movement against her, including persons who are, or have been, officially or otherwise, connected with the provisional government, depriving them of no right or privilege which they enjoyed before the so-called revolution. All obligations created by the provisional government in due course of administration should be assumed.

Having secured the queen's agreement to pursue this wise and humane policy, which it is believed you will speedily obtain, you will then advise the executive of the provisional government and his ministers of the President's determination of the question which their action and that of the queen devolved upon him, and that they are expected promptly to relinquish to her her constitutional authority.

Should the queen decline to pursue the liberal course suggested, or should the provisional government refuse to abide by the President's decision, you will report the facts and await further directions.

In carrying out these general instructions you will be guided largely by your own good judgment in dealing with the delicate situation.

I am, Sir,

Your obedient servant,

HON. ALBERT S. WILLIS.

W. Q. GRESHAM.

The publication of the letter of October 18, as outlining the policy of the administration—for it was anticipated that Mr. Cleveland would approve it, as he did in his special message to Congress two months later—riveted the attention of the entire country on Hawaii. The criticisms broke forth afresh. Again my husband enjoyed the saying, that “Judge Gresham is no diplomat.” “His letter to the President is not a State paper but that of a judge of a court after hearing a cause between two parties.” It was thus he intended it and he believed there was such a thing as public morality, that “right and justice” should govern the conduct of nations the same as that of individuals, although there was no machinery except force known to international law to control the former. The fear was abroad in the land that the Secretary of State would use the army and navy to put the queen back on her throne. It would not have been an act of war to restore the queen under the circumstances. And had she promptly responded to his advice, the report to Congress would have been that she had been restored. Her hesitancy to agree to amnesty, “bloodthirstiness” it was called, made Mr. Cleveland timid about acting,—instead, he referred the matter to Congress. To restore her by force, it was argued, would be an act of war that Congress alone could authorize, but if so, this power, the Secretary of State believed and argued, Congress should use.

From his home in Augusta, Maine, ex-Minister John L. Stevens undertook to answer the statement and conclusions of the letter of October 18. He showed his baseness when he asserted that the queen was immoral, as a reason for dethroning her. The report of Mr. Blount asserted that this was not true. No reference would be made here to Liliuokalani's private character but for the fact that men of long diplomatic training, like Robert R. Hitt of the Foreign Affairs Committee of the House of Representatives, Senator Lodge, and others, used these assertions of Minister Stevens to prejudice her case before the American people.

One day at luncheon in the Arlington Hotel, former Senator Edmunds joined my husband and myself. In the Arthur administration my husband had advised President Arthur, when it seemed that he could not be nominated, to take his forces to Senator Edmunds. He and Senator Edmunds had always been friends. Edmunds came to Mr. Gresham as a friend, and said that when he was in the Senate and on the Foreign Affairs Committee, if there was any information in the possession of the State Department which it would not be advisable to make public, upon the representations of the Secretary of State to that effect to the Committee on Foreign Relations, the request for the information would not be pressed, that the information, if of a confidential nature, could be disclosed to the committee and that that confidence would be observed. "Now," said ex-Senator Edmunds, "if you will take the Foreign Affairs Committee into your confidence and there is anything that should not be made public, you can rely upon its members observing confidence."

After the luncheon was over and Senator Edmunds had left, Mr. Gresham said, "Senator Edmunds may be advising me in good faith, but he is a most bitter partisan, and the fact is, the telegrams that Senator Lodge and others desire, as they well know, contain statements reflecting on the

character of the Hawaiian queen as a woman. The purpose of the men in the Senate who are pressing for the production of these telegrams is unfairly to influence the public mind by statements that Minister Stevens should never have put in his telegrams, statements that Blount's report shows there was no basis for making." Then, after a pause, "They will never get these telegrams." The pressure continued great, but the telegrams never were produced. Afraid of nothing but sin, as Henry Watterson said, my husband did not believe that the weakness and frailties of a woman, even if they existed, should be made the basis for dethroning her, and he was willing to stand all the odium and abuse that could be heaped upon him, even by many whose own private morals were not above reproach.

Before Congress met, my husband believed that the best thought and conscience of the nation were with him, for he had the support of publicists like Henry Watterson, Horace White, Carl Schurz, then editor of *Harper's Weekly*, and men like ex-Secretary of the Treasury Benjamin H. Bristow and Honorable John E. Lamb, of Terre Haute, Indiana, still a young man who had served in Congress as a member of the Foreign Relations Committee, and had been Senator Voorhees' law partner. Up on public questions with the best of them, and against imperialism from the beginning, Lamb's influence with Senator Voorhees and the other Indiana senator, Turpie, was—to use one of Mr. Lincoln's phrases—"most helpful." Senator Turpie was a member of the Committee on Foreign Affairs, and while he was for annexation, *he had scruples*. The letters from the common people voiced their approval.

It was after the Blount report had been received, and analyzed as only a man long trained in marshaling apparently conflicting testimony can do, that on the 24th day of September, 1893, Carl Schurz, after stating he had opened up against the new policy of imperialism, wrote:

I thank you very much for the confidential communication you make to me in your letter of the 14th inst. and appreciate it highly. You can of course depend on my discretion. The position you indicate as yours with regard to the Hawaiian business is unquestionably the correct one. It will, however, be a very delicate task completely to undo the mischief that has been done. You are no doubt aware of the demagogic outcry bound to assail every act of justice and good policy in this matter, but I am glad to know that nothing of the kind will frighten you.

At this time the venerable Judge M. J. Bundy, one of the founders of the Republican party, my husband's friend and counselor in the Indiana legislature in 1861, wrote from Newcastle, Indiana, the warning that "the Democratic party has always been a party of annexation and grab, and has never had any scruples as to how they got it." But there was a new order of men and measures. The Secretary of State had the practical politician—the man of the machine—behind him as well as the sentimentalist, the publicist, and the statesman.

At this time, before Congress met, Thomas Taggart, who had already won his spurs in many "local affairs" and who subsequently became a United States senator and then chairman of the Indiana Democratic State Central Committee, sent word to Judge Gresham that he approved of the proposed Hawaiian policy, and that he believed in a great and powerful nation protecting instead of pulling down a weak and helpless one. Mr. Taggart was speaking from his heart, and that disposition of his to aid the weak and helpless, and, what is more, deriving pleasure in gratifying it, has rightly contributed to his power and influence.

And there were men like Attorney-General Olney who questioned the policy of the course to be pursued. Major Bluford Wilson, through whom Secretary of State Gresham had made public his purpose to vote for Grover Cleveland, came to Washington to urge that the acquisition of the Hawaiian Islands be accepted as an accomplished fact,



regardless of what had happened and how it had been brought about.

Instead of Mr. Cleveland regarding and treating his cabinet ministers as mere clerks, as it was charged, the contrary was true. He gave a man his confidence and generally went with him to the logic of his conclusions. It was Mr. Cleveland who first yielded to my husband's argument that nothing short of the restoration of the queen — immoral though she might be, as the Republicans claimed — would be in keeping with justice and international morality, and then up to a certain point he supported it with all his personal force and official power.

John T. Morgan, the chairman of the Foreign Affairs Committee of the United States Senate, was an imperialist, an annexationist, a high protectionist, and an enemy of the Cleveland administration from start to finish. Senator George F. Gray, the next ranking member on the committee, was an administration man of the finest ability and attainments, but, to use Ambassador Bayard's expression, he would not press the contest. The Secretary of State early threw out his lines for Senator George G. Vest of Missouri, who answered: "While I am *persona non grata* at the White House, *I will come to the State Department. I am your friend now as I have always been.*" He came and was primed especially for Senator George F. Hoar of Massachusetts. Missouri never entirely got out of the Union, but as far as it went George G. Vest went with it and represented it in the Confederate Congress. At this time, 1893, long a member of the United States Senate, and one of its ablest debaters, he was always ready for Senator Hoar. He would know in advance what Senator Hoar's position would be and would write by special messenger to my husband for data if he or some other Senator needed it. The forces of the State Department never failed to supply him with the data or precedents he wanted. Professor John Bassett Moore was a mine of information, and whatever may be

said about some of the judicial judgments of Kenesaw M. Landis, his energy and ability to work and mix was prodigious, and with Secretary Gresham to guide, he made no mistakes. Senator Vest's hatred of Grover Cleveland was only equaled by the delight he took in exposing and ridiculing some of the pretensions of New England to superior solicitude for the inferior races. "The Pilgrims fell on their knees and then on the Aborigines."

But it was Senator Roger Q. Mills of Texas who lived up to the *sound morality* of the situation to which Attorney-General Olney would not go. Had Wendell Phillips<sup>1</sup> been alive he could have truthfully declared, "I would rather have been born in Texas than Massachusetts." To Mr. Mills my husband talked and wrote his views.

Finally the heat of the debate and the position of the provisional government wearied Senator Hoar of the conflict. He had a good heart. Privately he sent my husband word he would quit and he did. Afterwards he made himself famous by his speeches in opposition to the purchase of the Philippines. And the pressing home of the morals of the position of the Cleveland administration in the Hawaiian debate to men of conscience like George F. Hoar, determined his position and that of many others when it came to the adoption of a permanent colonial policy in the Philippines.

It won back the support and confidence of men like William E. Mason of Illinois, who was one of Walter Q. Gresham's most loyal and efficient supporters in the 1888 Convention, and who had most bitterly resented the vote for Grover Cleveland. To United States Senator Mason it was due, more than any other man, that the United States kept faith with Cuba.

November 16, Mr. Willis had an interview alone with the queen in which he acquainted her with his instructions to restore her provided she would accord complete amnesty to the members of the provisional government and accept

<sup>1</sup>See Introduction; also pages 53 and 103.

the validity of all its official acts. This she refused to do, because she said the constitution required the death penalty in all cases of treason.

That day he made a full report of the interview, including a stenographic copy, and sent the following telegram: "Views of the first party so extreme as to require further instructions."

This telegram was received in Washington on November 24. The letter had not yet arrived and did not arrive until December 16. At this time there was no cable between Honolulu and San Francisco. Mr. Willis was able to get his telegram on the steamer leaving the 16th, but not his letter. The telegram reached Washington the 24th, and was answered briefly that day as follows:

The brevity and uncertainty of your telegrams are embarrassing. You will insist upon amnesty and recognition of the obligations of the provisional government as essential conditions of restoration. All interests will be promoted by prompt action.

Then, on December 3, the following dispatch was sent to Mr. Willis:

Your dispatch which was answered by steamer of the 25th of November seems to call for additional instructions. Should the queen refuse assent to the written conditions, you will at once inform her that the President will cease interposition in her behalf, and that while he deems it his duty to endeavor to restore to the sovereign the constitutional government of the Islands, his further efforts in that direction will depend upon the queen's unqualified agreement that all obligations created by the provisional government in a proper course of administration shall be assumed and upon such pledges by her as will prevent the adoption of any measures of prescription or punishment for what has been done in the past by those setting up or supporting the provisional government.

Should the queen ask whether if she accedes to these conditions active steps will be taken by the United States to effect her restoration or to maintain her authority thereafter, you will say the President cannot use force without the authority of Congress.

Should the queen accept conditions and the provisional government refuse to surrender, you will be governed by previous instructions. If the provisional government asks whether the United States will hold the queen to a fulfillment of the stipulated conditions, you will say, the President acting under the dictates of honor and duty as he has done in endeavoring to effect restoration, will do all in his constitutional power to cause the observance of the conditions he has imposed.

In his annual message of December 4, 1893, Mr. Cleveland promised he would send to Congress later a special message on the situation in Hawaii. Meanwhile Mr. Willis's letter of November 16 arrived, and on December 18 this special message went to Congress:

Though I am not able now to report a definite change in the actual situation, I am convinced that the difficulties lately created both here and in Hawaii are now standing in the way of solution through executive action of the problem presented, and render it proper and expedient that the matter should be referred to the broader authority and discretion of Congress, with a full explanation of the endeavor thus far made to deal with the emergency and a statement of the considerations which have governed my action.

The conditions suggested, as the instructions show, contemplate a general amnesty to those concerned in setting up the provisional government, and a recognition of all its *bona fide* acts and obligations. In short, they require that the past should be buried, and that the restored government should resume its authority as if its continuity had not been interrupted. These conditions have not proved acceptable to the queen, and though she had been informed that they will be insisted upon, and that unless acceded to, the efforts of the President to aid in the restoration of her government will cease, I have not thus far learned that she is willing to yield them her acquiescence. The check which my plans have encountered has prevented their presentation to the members of the provisional government, while unfortunate public misrepresentation of the situation and exaggerated statements of the sentiments of our people have obviously injured the prospects of successful executive mediation.

In the next place, upon the face of the papers submitted with the treaty, it clearly appeared that there was an open and undetermined issue of facts of the most vital importance. The message of the President (February 15, 1893) accompanying the treaty declared that the "overthrow of the monarchy was not in any way promoted by this government." But a protest also accompanied this treaty signed by the queen and her ministers at the time she made way for the provisional government, which explicitly stated that she yielded to the superior force of the United States, whose minister had caused United States troops to be landed at Honolulu and declared that he would support such provisional government.

The truth or falsity of this protest was surely of the first importance, yet the truth or falsity of the protest had not been investigated.

In the midst of the so-called revolution the Committee of Public Safety addressed Minister Stevens a note in which they said, "We are unable to protect ourselves without aid and therefore pray for the protection of the United States forces." When this note was written, the committee, so far as it appears, had neither a man or a gun at their command.

A little further along he said: "Indeed, the representatives of that government say that the people of Hawaii are unfit for popular government and frankly avow that they can best be ruled by arbitrary or despotic power."

Expressions or sentences like the following in the message, it was said at the time, were the utterances of a judge or chancellor:

Our country was in danger of occupying the position of having actually set up a temporary government on foreign soil for the purpose of acquiring through that agency territory which we had wrongfully put in its possession. The control of both sides of a bargain acquired in such a manner is called by a familiar and unpleasant name when found in private transactions.

I mistake the American people if they favor the odious doctrine that there is no such thing as international morality.

The law of nations is founded upon reason and justice, and the rules of conduct governing individual relations between citizens

or subjects of a civilized State are equally applicable as between enlightened nations. The consideration that international law is without a court for its enforcement, and that obedience to its commands practically depends upon good faith instead of upon the mandate of a superior tribunal, only gives additional sanction to the law itself and brands any deliberate infraction of it not merely as a wrong but as a disgrace. *A man of true honor protects the unwritten word which binds his conscience more scrupulously, if possible, than he does the bond, a breach of which subjects him to legal liabilities:* and the United States in aiming to maintain itself as one of the most enlightened of nations would do its citizens gross injustice if it applied to its international relations any other than a high standard of honor and morality. On that ground the United States cannot be properly put in the position of countenancing a wrong after its commission any more than in that of consenting to it in advance. On that ground it cannot allow itself to refuse to redress an injury inflicted through an abuse of power by officers clothed with its authority and wearing its uniforms: and on the same ground, if a feeble but friendly State is in danger of being robbed of its independence and sovereignty by a misuse of the name and power of the United States, the United States cannot fail to vindicate its honor and its sense of justice by an earnest effort to make all possible reparation.

Intense was the interest when this message was read, and bitter the opposition of the Democrats in the Senate to the request of Senator W. E. Chandler of New Hampshire for the immediate reading of the Secretary of State's instructions to Mr. Willis, those of October 18, November 25, and December 3, 1893. For a half day the debate went on. Finally Senator Voorhees threw his weight against the attempt to gain a partisan advantage, contrary to the uniform custom of the Senate, by allowing only part of the public documents that accompanied a message to be read. Then Senator Chandler, who, we have already shown, had revealed to my husband his sympathy for the course of the administration and who actually knew what was in these dispatches, declared that he was no partisan and proved

it by reminding the Senate that he had served all through the special session of the summer before, under the leadership of that distinguished financier, the chairman of the Finance Committee, the Senator from Indiana, in supporting a Democratic administration in repealing the purchasing clause of the Sherman Act. The humor of the situation dawned on them. Unanimous consent was given, the instructions were read, and one of the criticisms of the critics was silenced, namely, that it had been the purpose of the Secretary of State and of the President, without the consent of Congress, to use force in restoring the queen.

Still the criticism was made that the Secretary of State had all but threatened to make war on the provisional government; and that instead of answering the inquiry of the representative of the provisional government when the latter called at the State Department (prefacing the question that that government could not and would not undertake to resist the forces of the United States), as to whether the executive branch of the government of the United States proposed to use the army and navy to restore the queen, the Secretary of State replied, "I commend to you a study of the Constitution and laws of the United States." The connection was manifested when Senator Morgan of Alabama supported the resolution (which did not pass) of Senator Fry of Maine that, pending the investigation of the situation in Hawaii, *there should be no interference on the part of the government of the United States by moral or physical force for the restoration of Liliuokalani*. Indeed, as Senator Mills remarked in the Senate, "Politics makes strange bedfellows." Senator Morgan was virulent and vindictive toward Mr. Cleveland and the Secretary of State, and on one occasion, it was said, a meeting of the Foreign Affairs Committee of the Senate was suddenly adjourned to prevent the chairman of that committee from coming to blows with the Secretary of State.

Little progress did Senator Morgan ever make with his

bill for the construction of the Nicaraguan Canal. Senator Turpie made an elaborate argument against it and the administration went to the people of Alabama and brought him to his knees.

On December 19, 1893, Mr. Willis secured the queen's written assent to the required conditions and called on the provisional government and made known his instructions, acquainted it that he had the queen's written guaranty of amnesty and assumption of all the acts of the provisional government in the ordinary course of administration, and requested it to relinquish to the queen her government.

It was through one of her former ministers and the British minister to Hawaii that the queen was prevailed on to agree to the terms our government demanded before restoring her. The action of the British minister in this affair shows the absurdity of the claim of the jingoists that Great Britain was scheming to secure the Islands. Afterwards Liliuokalani complained that her mistake in refusing the conditions offered in the first instance was that she was without any competent adviser, and that her long silence was due to the fact that Minister Willis had cautioned her to keep inviolably secret the proposition he had made to her, which she had done until he advised her to take counsel of some one or two of her friends. This action was after Mr. Willis received the telegrams of November 25 and December 3. Mr. Willis cautioned silence on her part because he said he feared that a premature publication of his plans might result in Liliuokalani's assassination. Certain it is that she showed a man's ability to keep a secret, also courage both moral and physical of the highest order, even if her first impulses, which my husband did not think should have been counted against her, were not humane.

Afterwards she complained that the men who were waging the unequal contest against her were given every opportunity to counsel and advise before making an answer. She refused to be bought off by her enemies in Hawaii or



in the United States; that is, to accept any of the crown lands in Hawaii or any money compensation from the United States. So she made good her protest to the last.

The answer of the provisional government was handed to Mr. Willis December 23, 1893. It reached Washington January 12, 1894, was answered that day, and was sent to the Senate and House January 13, together with all correspondence between Mr. Willis and the queen and the provisional government from November 16, 1893. The only document withheld was Mr. Stevens's dispatch No. 70 to Mr. Blaine, and that never was produced.

And now for the position of the provisional government through its president, who signed himself, "Sanford B. Dole, Minister of Foreign Affairs."

My position is briefly this: If the American forces illegally assisted the revolutionists in the provisional government, that government is not responsible for their wrong-doing. It was purely a private matter for discipline between the United States government and its own officers. There is, I submit, no precedent in international law for the theory that such action of the American troops has conferred upon the United States authority over the officials of this government. Should it be true, as you have suggested, that the American government made itself responsible to the queen, who, it is alleged, lost her throne through such action, that is not a matter for me to discuss, except to submit that if such be the case, it is a matter for the American government and her to settle between them. This government, a recognized sovereign power, equal in authority with the United States government and enjoying domestic relations with it, cannot be destroyed by it for the sake of discharging its obligations to the ex-queen.

Upon these grounds [the foregoing, and the denial that the provisional government had agreed that the President of the United States should arbitrate the differences between it and the queen], Mr. Minister, in behalf of my government, I respectfully protest against the usurpation of its authority as suggested by the language of your communication.

Such ingenuous language from the son of a missionary born in Honolulu but educated at Williams College, and his legal education acquired in a Boston law office, while it might, as it did, receive the sanction of the narrow technical lawyer, shocked the judicial conscience. From the chancery side swift work would have been made of such "*pretenses*." But the question then was before Congress, whose power was complete and duty plain in the premises, as both President Cleveland and the Secretary of State stated in their answer to Mr. Willis, which was then sent to Congress along with Mr. Dole's communication to Mr. Willis.

The President entertains a different view of his responsibility and duty limited to dealing with our own unfaithful officials and that he can take no steps looking to the correction of the wrong done. The subversion of the Hawaiian government by an abuse of the authority of the United States was in plain violation of international law. It required the President to disavow and condemn the act of our offending officials, and within the limits of his constitutional power to endeavor to restore the lawful authority.

It was this language and conduct in keeping with it that silenced the criticisms of the senior Senator from Massachusetts on the Cleveland administration, although it then failed to elevate him to the support of its honorable and high moral position, a position which Senator Hoar took five years later, and a position which I venture will be the position of the American people and this government in the future.

This language and subsequent conduct explains why Hawaii, instead of being a State, as was originally contemplated, is now not even under a territorial government popular in form; that is, that it never can be a State of this Union. Its government is like that of the District of Columbia, under a governor appointed by the President of the United States. In this governor is centered all executive and much of legislative power. The judges are appointed by the President.

June 16, 1897, a treaty of annexation between the United States and the Republic was sent to the Senate. The oligarchy after its failure to secure annexation under President Cleveland's administration, changed its form and name to that of the Republic of Hawaii. But the treaty failing to receive the constitutional two-thirds vote of the Senate, annexation was brought about by a joint resolution of both Houses which only required a majority vote—not the way contemplated by the framers of the constitution for the annexation. Senator Hoar was not enthusiastic in the acquisition for he foresaw it meant the taking over of the Philippines and imperialism.

To show the intensity of the feeling, Isador Raynor, a member of Congress from Maryland, from his home in Baltimore January 1, 1894, wrote to the Secretary of State for certain data, and requesting that he ask the Speaker to recognize him immediately following James B. McCreary, chairman of the Foreign Affairs Committee. "We will," said Mr. Raynor, "set aside the debate on the tariff and debate and sustain the report of the Foreign Affairs Committee, approving the action of the administration and condemning that of Minister Stevens." The debate began in the House February 2 and lasted until February 7, with a Sunday intervening.

McCreary of Kentucky, Raynor of Maryland, Money of Mississippi, Patterson of Tennessee, General "Joe" Wheeler of Alabama, Oates of Alabama, McDonald of Illinois, General Black of Illinois, Hall of Minnesota, Outhwaite of Ohio, Everett and Hooker of Mississippi, sustained the administration, while Robert R. Hitt led off against it, followed by these Republicans: Blair of New Hampshire, Draper and Morse of Massachusetts, Boutelle of Maine, Van Voorhis of New York, Post of Illinois, Lacy of Michigan, Storer of Ohio, and Hepburn of Iowa.

The queen's first refusal to grant amnesty lost her the

support of Congress, but the critics of the administration were not spared. Said DeSota Money, "I also heartily endorse his [Hitt's] proposition that the white race shall and ought to be dominant wherever on the face of the globe they assert their ascendancy." But Mississippi chivalry was above even wantonly attacking a colored woman's character, so he condemned the attack of Messrs Stevens and Hitt on the queen's personal character and put this question to Mr. Hitt: "With how many courts of Europe would we have diplomatic relations if we were to go into the private character of their rulers?"

Then by a vote of 177 yeas to 78 nays, 96 present but not voting, the resolution as reported by Mr. McCreary of the Foreign Affairs Committee was adopted,—that the action of the United States minister in employing the United States naval forces, and in illegally aiding in overthrowing the constitutional government of the Hawaiian Islands and setting up in its place a provisional government, not republican in form and in opposition to the will of the majority of the people, was contrary to the traditions of our Republic and the spirit of our Constitution, and should be and is condemned.

In the Senate the administration did not fare quite so well, for Senator Morgan did all he could to embarrass it, but in the end he was forced to indorse its action.

The debate continued in the Senate until February, 1895. And in the meantime "that free trade measure," the Wilson Bill, which the Sugar Trust and the New England Senators, led by Senator Aldrich, had such a hand in revamping in the Senate, had passed.

Senator Mills of Texas did not need any coaching from start to finish, but many of his facts and arguments were furnished him by the Secretary of State. I still hold the copies of the letters that were written to the Texas Senator.

He read from the Republican party platform of 1856:

*Resolved*, That the highwayman's plea that "might makes right," embodied in the Ostend circular, was in every respect unworthy of American diplomacy, and would bring shame and dishonor upon any government or people that gave it their sanction.

The Republicans declared that the proposal to seize Cuba was the doctrine of the highwayman, and yet, when the armed forces of the United States seized the Hawaiian Islands, put the United States flag over them and declared a protectorate over them, making the United States responsible for them, asserted that that was a wise policy, a highly moral and highly Christian policy.

Senators Lodge and Hoar had made much of the letter of credence of Mr. Willis in which President Dole of the provisional republic was addressed by President Cleveland as his "Great and Good Friend." Senator Mills rung the changes on President Harrison's letter to his "Great and Good Friend" Liliuokalani, accrediting Minister Stevens to her and commending him to her "confidence."

I have intrusted this gentleman to present to you this expression of my wishes and commend him to your confidence as the trusted agent of the government of the United States in Hawaii.

In the full belief he will deserve the confidence and that his mission will serve to draw still closer, if possible, the friendly relations of the two countries, I pray God to have Your Majesty in His wise keeping.

Your Good Friend,

BENJAMIN HARRISON.

The queen did confide in him, and he as the ambassador and representative of the government of the United States used the armed power of this country to destroy an innocent and helpless people in order that New England corporations (forty of them) might get possession of their property, own their sugar plantations, and wring out of the pockets of the American people a bounty which the sugar corporations have received to the amount of more than \$51,000,000 since the treaty was made. This was done by New

England and other corporations of the United States—mostly from the section of the country where its great capital is massed.

The Queen's crime (Mr. Mills said) was wanting the land for her own people. Mr. President, that poor woman was told in her agonies and while surrounded by a cordon of bayonets, that Great Britain once restored that government when an unauthorized naval officer had torn down the flag and hoisted the British flag. She was asked, "Why not rely on your good friend Benjamin Harrison? Can you not rely upon the President of the United States to do you justice and restore you?"

Of course, Senator Mills was for restoring the *status quo*.

The Queen of the Hawaiian Islands was the representative of the people of the Hawaiian Islands. Among all the barbaric, half-civilized, and savage people no such thing as popular government is known. Popular government can exist only in the domain of high and exalted civilization; there must be public virtue and public intelligence to support a representative government springing from the consent of the governed. Rude people have what they call a chief, a king, and to whom they give other titles. *These rulers represent them, and they are the choice of their people.*

But whether the old government of Hawaii was right or wrong *in form* is not for us to discuss: it was the government of the Hawaiian Islands, and it was overthrown by the armed power of the United States.

Place us back again where you found us. We are disarmed and you have disarmed us.

There was no reason, Mr. Mills contended, why the Republicans should not do this. At the behest of the Sugar Trust they united with England and Germany in "selecting, appointing, and maintaining" Malietoa as king of the Samoan Islands, while they deposed and kept in jail the native chieftain Mataafa in the Marshall Islands, which belong to Germany. This joint protectorate over Samoa, Secretary of State Gresham was saying, should be dissolved, and Senator Teller said that it should never have been entered into.

Continuing, Senator Mills said:

I was a member of the House when Speaker Blaine, a Republican Congress, and a Republican President received the Hawaiian king, the predecessor of Liliuokalani. There was nothing said then against his being king. They wanted to negotiate the sugar treaty. New England capitalists wanted to get the sugar lands of the king. They have them now. Now royal rule is in the way. The poor painted queen had sympathy for her people: she wanted homes for them, not on top of the mountains, on some of which Mr. Thurston says one can sit astride. She wanted some portion of the land which had belonged to her people centuries ago, but the sugar trust wanted it also and they were more powerful than the queen. Over \$30,000,000 of the \$75,000,000 of the sugar trust stock is held in New England.

Mr. Mills criticized Mr. Cleveland for not receiving the Hawaiian commissioners, who on August 11, 1894, called on the Secretary of State and requested in writing an audience with the President. "He should have received them and told them that he sympathized with their people and regretted the wrongs done them; that he had reported their case to Congress; that Congress had turned away from them, as they turn away sometimes from the best interests of their own people, and he was powerless to grant their request."

Instead of "Access to the Conscience of the American People," the history of their wrongs must stop in the waste basket of the diplomatic representative of the government which our troops helped to establish, and against which they complain.

Senators Aldrich, Hale, and Fry were hurt to the quick by Senator Mills adverting to the unjust stories the New York *Evening Post* and other papers were publishing about their connection with the Sugar Trust and Hawaiian bonds that could be bought for twenty-five cents on the dollar.

Only the queen's own words defeated her restoration. Her "bloodthirstiness," as it was called, made Mr. Cleveland and many of the leading Democratic Senators timid about acting, that is, restoring the *status quo*, or the queen

to the throne, and reporting her restoration as an accomplished fact. The only way to preserve society and government, as we understand it, my husband said, was to do justice in the particular case, and he believed he could do it in Lilioukalani's case, and save the lives of every one of her rebellious subjects. As Lord Mansfield said in the Negro Case, "We will do justice though the Heavens fall."<sup>1</sup> Annexation was rejected but the provisional government was not recognized. The resolutions of the Foreign Affairs Committee—there were several sets and many introduced by various Senators not members of that committee—were redrafted on the floor of the Senate (in which Senator Vest took the lead) and were passed in the following form, February 28, 1894:

*Resolved:* That of right it belongs wholly to the people of the Hawaiian Islands to establish and maintain their own form of government and domestic policy: that the United States ought in no wise to interfere therewith, and that any intervention in the political affairs of their Islands by any other government will be regarded as an act unfriendly to the United States.

The population of the Hawaiian Islands at this time was 89,990: 15,301 Chinese, 12,360 Japanese, 8,602 Portuguese (very few of whom could read and write), 1,344 British, 1,298 Americans, 1,034 Germans, 588 Polynesians, 227 Norwegians, 70 French, 419 scattering, and 40,622 Hawaiians and half-castes. Of the Hawaiians and half-castes, 12,721 could read and write. Unfitted for a popular government, they were happy and contented under the government of their choice, their queen, asserted Senator Mills. And certainly an oligarchy was no better than a constitutional monarchy.

January 26, 1895, the Senate declared for a policy of non-intervention and approved President Cleveland's acts in carrying it out. During the month of January, 1895, a feeble and unsuccessful attempt was made to overthrow the Hawaiian Republic.

<sup>1</sup> See page 38.



On February 9, a message came via steamer as far as San Francisco, from Minister Willis, saying that thirty-eight of the rebels had been tried by a court-martial, a number condemned to death, others banished, while two hundred remained to be tried. Notwithstanding the declaration of non-intervention that the Senate had passed a few days before, Secretary Gresham, without waiting even to consult President Cleveland, cabled Minister Willis to call on the officers of the Republic of Hawaii and demand a suspension of the execution of the condemned. A report as to the evidence on which the judgments were based was immediately transmitted to Congress.

In the Senate, Senator Morgan said we had adopted a policy of non-intervention in Hawaii, to which he was opposed, and in view of it we had no concern with their affairs. For himself he said he would have more respect for Hawaii if she shot a traitor than if she forgave him. "But the best thing for the United States to do is to keep out of this new phase of the subject."

But Republican Senators like Hawley and Hale vigorously dissented from Mr. Morgan's policy and said that "while the American people have thus far sympathized with the efforts to establish a republican form of government in Hawaii, there will be a speedy change if this barbarous course is pursued."

Mr. Willis reported that it was Secretary Gresham's cable that saved the lives of all the condemned.

If the Hawaiian policy was unpopular with the jingoists, it was not with the representatives of Mexico, of the Central and South American Republics, and with China and Japan. The representative European countries marveled at the moderation of our government and of its declining to take Hawaii under the circumstances, although it was recognized that in the face of the opinion of the court, as was contemptuously said, there was no other conclusion than that arrived at. The representatives of Mexico, the

Central American and South American States, and China took it as conclusive, as Minister Romero of Mexico said, "that there was no design on the part of the American nation to aggrandize itself at the expense of its weaker neighbors. Every one regards the United States as our friend, and the letter of October 18, 1893, the greatest State paper from America on foreign relations."<sup>1</sup>

After my husband's death there was a mass meeting of Hawaiians at which they expressed their sympathy in a set of resolutions which I copy:

WHEREAS, Mr. Gresham, as Secretary of State, was called upon to inquire into the affairs of Hawaii, owing to the wrongs done to our sovereign and people by representatives of the United States of America: and

WHEREAS, after a full and patient examination Mr. Gresham decided that our sovereign and the true people of Hawaii had been wrongfully treated, and that the President and people of the United States ought to repair the wrongs done by the servants of that great people: and

WHEREAS, in all his acts in our behalf Mr. Gresham showed a high sense of justice and mercy and great courage: and

WHEREAS, *Mr. Gresham was in no way responsible for the continuance of the wrongs under which we still suffer:*

THEREFORE, we, in the hour of their bereavement, extend our sincere sympathy to Mrs Gresham and her children.

<sup>1</sup> Mr. Gresham's course in the case of Hawaii is in my opinion the most creditable act to himself and to his country of the long list of distinguished public services rendered by him during his incumbency of the Department of State.

It is useless to discuss whether Mr. Gresham or President Cleveland was the originator of that policy. It throws plenty of high honor on both of them. And from the light of subsequent events Mr. Gresham deserves a great deal of credit. It is in my opinion, more than enough to stamp Mr. Gresham as one of the greatest statesmen of this country even if he had done nothing else.

From the records it appears that Mr. Gresham originated it in his report of October 18, 1893, to the President, just mentioned, although it met with the most cordial approval from the President in his message to Congress December 18, 1893, the date of Mr. Gresham's report.

## CHAPTER XLVIII

### BRAZIL, NICARAGUA, AND CUBA

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INSURRECTION IN BRAZIL—NAVAL REVOLT—UNITED STATES INTERVENES—MONARCHY PREVENTED—GREAT BRITAIN WITHDRAWS PRETENSIONS TO SOVEREIGNTY IN NICARAGUA—REVOLUTION IN THE MOSQUITO STRIP AGAINST NICARAGUAN AUTHORITY—UNITED STATES ENFORCES PAYMENT OF GREAT BRITAIN'S CLAIMS UPON NICARAGUA—INVESTIGATION OF VENEZUELAN QUESTION—SPANISH GUNBOAT FIRES ON UNITED STATES MAIL SHIP OFF CUBA—SPAIN APOLOGIZES—CHINESE-JAPANESE WAR.

THE part that our government played in overcoming the insurrection which had for its object the restoration of the monarchy in Brazil, perhaps because of the stirring events that were contemporaneous with and succeeded that incident, seems to have attracted little attention from historians. We heard much of it at the time. Almost daily the Brazilian minister, Salvador de Mendonça, called at our apartments. He was a very able man and was a firm believer in the Monroe Doctrine. At my husband's instance Señor Mendonça wrote an exposition of the Monroe Doctrine for the newspapers. Whatever its origin—English, Henry Watterson claims, at the instance of Lord Canning to resist the aggression of the Holy Alliance—Señor Mendonça, a Roman Catholic, and his countrymen, converts to a popular form of government as opposed to monarchy and imperialism, were in favor of the powerful republic to the north standing as guardian of all the struggling peoples to the south, that no European nation might permanently occupy any part of the Western Hemisphere, Canada excepted.

November 15, 1889, the monarchy in Brazil was overthrown and a republic was established. The republic went along well until September 7, 1893, when most of the Brazilian navy, under the leadership of Admiral De Mello, revolted. On land the republic retained its ascendancy under the leadership of Marshal Peixoto. The insurgents undertook to blockade the harbor at Rio Janeiro. Admiral Da Gama joined them with more ships for the avowed purpose of restoring the monarchy. The sympathy of the British shipping interests at Rio, the activity of the monarchists in Lisbon, London, and Paris, and the large sums of money spent by the Duc de Montpensier of Spain, the head of the Bourbon family and immensely rich, made it a question of much concern to our government. Ambassador Bayard was in constant private correspondence as well as official correspondence with the Secretary of State.

While the insurgents had not been accorded belligerent rights by any of the governments of Europe, when the captains of eight American merchantmen of Rio appealed to the Secretary of the Navy for protection to enable them to land their cargoes, they received answer that he was without authority to instruct Captain Pickering, the American naval commander, in the premises. Then complaints came to the State Department from W. S. Crossman & Brother of New York, and Isadore Strauss wrote to the head of the State Department vouching for Crossman & Brother and furnishing indisputable proof of the activities of the Brazilian insurgents and of their attempts to purchase a Grecian ironclad.

In the answer to Mr. Strauss, Secretary Gresham wrote:

The administration has not neglected anything necessary for the protection of American interests at Rio, and I can say to you in confidence, that should European powers attempt to reestablish the monarchy in Brazil, the Monroe Doctrine will not only be asserted by the administration but maintained. I will not risk repeating here the instructions which have been sent

to Mr. Bayard upon this subject. Of course, you will understand the importance of not letting this be made public.

When Rear-Admiral Stanton saluted the insurgent flag, he was recalled and Rear-Admiral Benham was sent in his stead. Admiral Benham reached Rio January 15, 1894. He had his flagship, the *San Francisco*, also the *Newark*, *Charleston*, and *Detroit*, all new cruisers. What Admiral Benham's instructions were will be revealed by what he did. Meanwhile the American merchantmen at Rio were advised through their owners to apply to Admiral Benham for protection.

With his long legislative experience and his four years at the head of the State Department, Thomas F. Bayard was one of the most efficient representatives the United States ever had at the Court of St. James. In Parliament Mr. Gladstone stated that the English government was doing all within international usage to protect British interests at Rio. And in Washington, Sir Julian Pauncefote was induced to make the announcement that the British ships at Rio were not to be used to sustain the revolting Brazilian war vessels.

Soon after his arrival, on January 18, Admiral Benham sent word to Marshal Peixoto, president of the Brazilian Republic, that he would be willing, as an individual, to intervene to bring the naval revolt to an honorable termination. Before an answer came from the Brazilian president, American ship captains complained that they were being fired on by Admiral Da Gama. The captain of the *Amy* from Baltimore, loaded with flour, reported to Admiral Benham that it was necessary for him to get to the wharf soon, as the flour would spoil in that hot climate. The *Amy* and the other American ship were being held in the offing by the insurgent ships. Copies of these written complaints Admiral Benham sent to Admiral Da Gama with a written communication in which he said the firing on American vessels must cease, and that on the following

day, January 28, he would convoy the schooner *Amy* to the wharf of the consignee and would sink any vessel that opposed the *Amy's* progress to the quay. As the inhabitants had not been accorded belligerent rights, Admiral Benham said in this communication to Admiral Da Gama that the insurgents would be pirates if they fired on the *Amy*.

Then, in plain view of the Brazilian fleet, Admiral Benham "stripped his ships for action." On the morning of the 29th the *Amy*, with the *Detroit* on her right, in order to be between her and the insurgent ships, and with the other American war vessels following, started for the quay. Soon the *Liberdade*, Da Gama's flagship, fired a blank shot as a signal to the *Amy* to stop. The *Detroit* answered with a musket, the ball of which struck the *Guanabara*; then, seizing his speaking trumpet, Captain Bronson of the *Detroit* hailed Admiral Da Gama and said, "I have fired and struck your ship. If you fire again, I will sink you." Da Gama answered, "I surrender." The *Amy* soon reached the quay, and it was no longer necessary for the president of the Brazilian Republic to consider the good offices of the American admiral. The insurrection was ended. This was the last attempt on the Western Hemisphere to establish a monarchy. The Brazilians wanted Da Gama turned over to them, but this was not done and he went to Europe. Although there was not much in the papers about the part Secretary Gresham took in this affair, every South American diplomat knew what he did. It was one of the things that gave him the confidence of that class.

But the Monroe Doctrine, as Secretary Gresham interpreted it, could not be made the cloak for oppression by any American nation or the pretext to escape its international obligations.

Kenesaw Mountain Landis, named after the mountain before which his father was wounded during the Civil War, explains why Da Gama was so ready to surrender to Captain Bronson. When it became apparent that the effort to

restore the monarchy would fail, Mendonça, the Brazilian minister, informed Secretary Gresham that the Brazilian government had reason to believe it was arranged that the British fleet should give asylum to the revolutionary commander, Admiral Da Gama. Thereupon Secretary Gresham had an interview with Sir Julian Pauncefoot and it was agreed that that should not be done. Shortly thereafter, a cablegram reached Secretary Gresham at midnight from Brazil, informing him that the British flagship had taken the revolutionary commander Da Gama aboard under cover of darkness. "Get a carriage, Landis. We must go and see Sir Julian." At two o'clock in the morning, the darkness of the British Embassy was broken by lights from cellar to garret, as excited lackeys and secretaries hastily gathered in answer to the summons of their chief. Greeting the Secretary of State Sir Julian desired to know, "To what am I indebted for the favor of this call?" Secretary Gresham replied, "Sir Julian, I have word from Brazil that your flagship has taken Da Gama aboard. Of course that is not true. You and I know it is not true, but I must be able to tell the President and Cabinet when we meet this morning that it is not true. Good morning, Sir Julian." Before the Cabinet met at 11 o'clock that morning, Sir Julian had called at the State Department and informed the Secretary of State that he had cabled the British Foreign Office, which, through the British Admiralty, had communicated with the flagship in the harbor of Rio, and Da Gama had been put back on his own ship.

For almost fifty years, notwithstanding the Clayton-Bulwer treaty, which provided for the neutralization of a canal at or near the Isthmus and the independence of Central America, Great Britain had claimed sovereignty in the Bluefield Reservation of Nicaragua through the Mosquito Indians. By the treaty of Managua of January 28, 1860, between Great Britain and Nicaragua, Great Britain had asserted the independence of the Indians and her right to

protect them. In construing this treaty of Mandagua, the Emperor of Austria, July 1, 1889, as an arbitrator, upheld the pretensions of Great Britain, and, among other things, held that Nicaragua should pay the Mosquito chief \$5,000 per annum for a term of years. The United States was not a party to this arbitration, and was not even consulted in advance as to its terms and the questions the arbitrator would pass on. Nicaragua refused to abide by the award and appealed to the United States.

With all Mr. Blaine's bluster he accomplished no results. Thomas F. Bayard was familiar with every phase of the subject. Secretary of State Gresham had had a touch of it in President Arthur's administration. Mr. Bayard pressed the English government direct, while Mr. Gresham negotiated with Sir Julian Pauncefote.

To Mr. Bayard the Secretary of State wrote June 7, 1894, as follows:

I have read many times your admirable instructions of November 23, 1888, to Mr. Phelps, American minister to London, and have said to the President that I think this administration should stand by it. You very correctly stated in your instructions to Mr. Phelps that when the Indians accepted the provisions made for them in the treaty of [Mandagua], direct relations were established between them and Nicaragua, and Great Britain ceased to be their protector or guardian.

To Sir Julian, Secretary Gresham argued, "There cannot be two sovereignties in the same territory." When Sir Julian said, as both Secretary of State Gresham and Ambassador Bayard anticipated he would, that under the treaty Great Britain was bound to see that Nicaragua did not oppress the Mosquito Indians, Secretary Gresham answered, "We will see that she does not." Nicaragua, on our demand, promptly paid the sum she was in arrears to the Indians under the award of the Austrian Emperor, and Great Britain withdrew all her pretensions to sovereignty in Nicaragua. More was accomplished by the conferences with



the British ambassador and the Nicaraguan minister than by correspondence.

No sooner had Great Britain withdrawn her claim to sovereignty in Nicaragua than a revolution, in which Americans and British subjects were the leaders, broke out in the Mosquito strip against the Nicaraguan authority. These Americans and British subjects were expelled from the Nicaraguan territory without any form of trial, and without giving them time to make necessary preparations for such a journey.

On remonstrances by our government, the Americans were permitted to return and continue unmolested in the exercise of their usual business, but not so with the British subjects. Great Britain remonstrated and demanded an indemnity.

I shall let Señor Romero, the Mexican minister to the United States, conclude this incident in a paper he prepared for publication a short time after my husband's death, but which was not published, possibly because Mr. Romero concluded it contained too many State secrets.

One day in April, 1895, when I went to see Mr. Gresham, I found him very busy at his office consulting the records of the Department about the application of the Monroe Doctrine in the Corinto or Nicaragua affair.

Nicaragua refused to pay the indemnity, and finally Great Britain sent, on February 26, 1895, an ultimatum through the commander of one of her men-of-war to the Nicaraguan government, demanding an apology, an immediate payment of 15,500 pounds sterling as a preliminary indemnity, and a further indemnity to be fixed by arbitration excluding all American governments, and threatening to take possession of some territory if the apology and payments were refused. I was under the impression that Great Britain had previously informed the United States that they intended to enforce the payment in that way, and not seize Nicaraguan territory for permanent keeping, and that she obtained in either a direct or an indirect way the assurance that the United States would not interfere, because otherwise I do not think Great Britain would have dared to occupy Corinto. My

reasons for thinking so were corroborated by what took place about the British Guiana boundary dispute, but I was afterwards assured by well-informed sources that there was no previous accord then.

When Nicaragua received the British ultimatum she applied at once to the United States for protection, because all the Central Republics consider the United States as their natural protector, and they think that this government will come to their rescue in their complications with foreign countries, no matter what may be the nature of the same, and in this belief they have been supported by the opinion of Mr. James G. Blaine, who, while Secretary of State of the United States during President Garfield's administration, stated that this country is the natural protector of all the American republics.

Mr. Gresham was studying in the records of the Department the action of the government in similar questions. When I came into his office, he seemed glad to see me and he asked for my opinion on the subject and what the United States had done in the case of Mexico when the French Emperor sent an army to interfere in our political affairs, and take possession of the country.

When I reminded him that the three allied powers, France, England, and Spain, had signed in London on October 31, 1861, a treaty of alliance to intervene in Mexico, and had asked the United States to join them, and that this country had refused that invitation, recognizing the right of the allies to make war upon Mexico, Mr. Gresham very properly remarked that Mr. Seward's answer would very likely have been quite different had this country been at that time at peace. He further said that the Nicaragua incident was not a case in which the United States could be asked to interfere, as the Monroe Doctrine was not affected by it, since Great Britain did not intend to make any permanent acquisitions of territory, but only tried to enforce a claim against another country.

He thought that Nicaragua being an independent nation Great Britain had a perfect right to enforce that claim upon her, and even seize, for the time being, a portion of her territory in case of non-payment. From the records of the Department of State it appeared that the United States government acted in a similar way toward Paraguay in 1858 under Mr. Buchanan's administration, when, having a claim against that country which

Paraguay would not settle, they sent an armed expedition to enforce it; and Mr. Gresham said that they could not deny to Great Britain the exercise of the same right under similar circumstances.

In Mr. Gresham's opinion, Nicaragua had done a wrong in expelling from her territory without any trial a British subject, and Great Britain had a right to demand satisfaction on that offense, going to the extent of making war; and the United States had no right to interfere under the Monroe Doctrine as long as Great Britain did not attempt to make a permanent acquisition of territory.

Mr. Gresham very properly said that Nicaragua as an independent country must accept the duties and responsibilities of such, and that if by her wrong-doing she offends other powers, she cannot ask the United States to take up her quarrels originating from acts that she had done against the opinion and advice of the United States.

The United States did not interfere then in that case, and in consequence of this the British men-of-war landed some marines at the port of Corinto and took possession of the town on April 27, 1895, the Nicaraguan garrison having previously been withdrawn to the interior.

To me, Mr. Gresham's position in the case was unassailable, although that incident after the Hawaiian question was perhaps the reason for which he was more or less abused by his political opponents. It would have made him very popular if he had tried to bully Great Britain by bringing the Monroe Doctrine in the case, but as a fair man and a man of principle he could not do so, and so he preferred to do right rather than to gain popularity at the expense of justice. With a view to justifying this construction of the Monroe Doctrine, Professor John B. Moore of Columbia College published a pamphlet expounding the Monroe Doctrine.

During the time Secretary Gresham was probing the Venezuelan question to the bottom, the situation in the Cuban revolt against Spain had become acute. I am not denying that many of our citizens were clandestinely violating our neutrality laws in aiding the Cuban insurgents. Every precaution was taken by the Cleveland administration to prevent the shipment of arms and supplies to Cuba,

but with our long coast line it was easy for men who had been trained by Great Britain in running the blockade of our Southern ports during our Civil War, to get through the blockade poor old Spain was endeavoring to maintain around the island of Cuba. W. C. Whitney was abroad at this time, and was writing and telegraphing information that was useful but did not go into the archives of the State Department. I do not think any one will question the fact that Walter Q. Gresham, long before he entered the State Department, was familiar with every fact and principle suggested and advanced for the settlement of the claims against Great Britain for the depredations on American commerce by the Confederate cruisers *Alabama* and *Florida*, under the Treaty of Washington,—“the most enduring monument to General Grant’s fame.”

Acting on information furnished by Crossman & Brother, Secretary of State Gresham, on March 14, 1895, sent to Harris Taylor, the American minister at Madrid, the following dispatch:

This Department is informed that on the 8th instant, the United States mail steamship *Alliance*, on her homeward voyage from Colon to New York, when six miles from the coast of Cuba, off Cape Maysi, was repeatedly fired on by a Spanish gunboat with solid shot, which fortunately fell short. The Windward Passage, where this occurred, is the natural and usual highway for vessels plying between ports of the United States and the Caribbean Sea. Through it several regular lines of American mail and commercial steamers pass weekly within sight of Cape Maysi. They are well known and their voyage embraces no Cuban port of call. Forcible interference with them cannot be claimed as a belligerent act, whether they pass within three miles of the Cuban coast or not, and can under no circumstances be tolerated when no state of war exists. This government will expect prompt disavowal of the unauthorized act and due expression of regret on the part of Spain, and it must insist that immediate and positive orders be given to Spanish naval commanders not to interfere with legitimate American commerce passing through

that channel, and prohibiting all acts wantonly imperiling life and property lawfully under the flag of the United States. You will communicate this to the Minister of Foreign Affairs and urge the importance of a prompt and satisfactory response.

The publication of this dispatch greatly perturbed Mr. Cleveland, but brought on the next day an answer from Mr. Taylor that the Spanish Minister of Foreign Affairs would make a specific and formal reply the moment the facts could be obtained from Cuba by telegram; also it brought a cablegram of congratulation from William C. Whitney.

The newspapers, of course, were full of the incident for the next few days, and there were many communications between Washington and Madrid. April 16, the Secretary of State sent this telegram to Mr. Taylor:

A month having elapsed since you communicated to the Spanish government the representations of this government touching the firing upon the *Alliance* on the high sea off Cape Maysi while innocently sailing under the American flag, the President deprecates further delay in responding to our just expectations. This government has given due weight to the serious situation in Spain and Cuba, but evidence appears so clearly to establish that the act complained of was indefensible, if not wanton, that delay is not understood.

This brought expression of regret and explanations that inasmuch as the *Alliance* was outside the three-mile limit, the officer in charge of the Spanish guard boat had been removed to another field and that instructions had been given that would prevent a repetition of the incident. After Mr. Gresham's death, Mr. Cleveland replied to the Spanish government that its explanations were satisfactory, and the incident was ended.

Despite the fact that the American government had large interests to conserve in both China and Japan, at the outbreak of hostilities between these countries each belligerent hastened to place its affairs, in the territory of the other, in the hands of the American government.

With Mr. Kurino, the Japanese minister, Secretary of State Gresham had been especially intimate from the beginning. Mr. Kurino had the distinction of securing for his country from the United States the first favored national treaty that was accorded it, a treaty which subsequent administrations endeavored to modify. Secretary of State Gresham had no hesitancy in advising Mr. Cleveland and the Senate to accord it to them. With the Chinese minister, Mr. Yang-Yu, Mr. Gresham was on the best of terms, while Madame Yang-Yu, as I have shown, regarded me as one of her special friends.

Not a great while before the treaty of peace between China and Japan I heard my husband tell Senator Platt of Connecticut that he feared Russia, France, England, and Germany, in the event of the Japanese armies crushing China, might, under the guise of preserving order in China, partition that country.

During the settlement of the Chinese-Japanese War, Col. John W. Foster gave out the report that he was cognizant of the views of, and was acting in harmony with, the American government. This brought forth the following inquiry from the Senate, at the instance of Senator Stewart of Nevada:

*Resolved:* That the Secretary of State be directed to inform the Senate whether John W. Foster has any official relations with the United States in assisting China in the peace negotiations with Japan.

The following was the answer:

The Secretary of State, in response to the resolution of the Senate dated January 4, 1895, has by direction of the President the honor to say that Mr. John W. Foster, in assisting China in peace negotiations with Japan, sustains no official or other relations to the United States.

Respectfully submitted,

W. Q. GRESHAM,

Mr. Kurino, the Japanese minister, told me his version of the sudden ending of the war when, after my husband's death, he and the secretary of the Japanese legation, M. Matsu, brought me as a gift from the Emperor of Japan a beautiful piece of tapestry, eleven feet wide by twenty-five feet long, too large for any ordinary residence, and two Cloisonné vases. Mr. Kurino told my son and myself that during the Chinese-Japanese War he met Mr. Gresham almost daily, and received from him information as to what was going on in the diplomatic world. This information he daily cabled to his government. "One day" said Mr. Kurino, "Secretary Gresham said to me, Japan should bring the war to a conclusion. If she continues to knock China to pieces, the powers, England, France, Germany, and Russia, under the guise of preserving order, will partition China. This information and the advice I transmitted immediately by cable to my government. And you know what we did. We ended the war almost as abruptly."

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## CHAPTER XLIX

### THE END

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LAST ILLNESS AND DEATH —INTERMENT IN ARLINGTON CEMETERY —DISPOSITION OF STATE MATTERS PENDING — SETTLEMENT OF THE VENEZUELAN CONTROVERSY FOLLOWS LINES LAID DOWN BY SECRETARY GRESHAM —HIS POLITICAL CONVICTIONS —OPPOSED TO IMPERIALISM AND ITS ACCOMPANIMENT, WAR —NOT A NON-RESISTANT —FIRST TO STAND FOR THE RIGHTS OF THE LITTLE NATION —BELIEVED JUSTICE THE END AND AIM OF GOVERNMENT —LIFE PLANS ENDED BY HIS DEATH.

EVERYTHING was moving along most auspiciously when in April my husband contracted a cold. In May it developed into pleurisy. After three weeks in bed the liquid was almost absorbed, and the physicians said that in a few days he could be out, when, on the 26th of May, pneumonia suddenly developed, and on the 28th of May, 1895, the end came.

We went to Chicago for the funeral as it seemed to me that this should be the burial place. Mr. Cleveland, the members of the cabinet, the Mexican minister, Mr. Romero, the Brazilian minister, Mr. Mendosa, and many others accompanied us.

After we reached Chicago, it was decided not to inter my husband's body permanently in that city. Although Chicago had been our home, and was, therefore, an appropriate resting place for my husband's remains, it was urged on me that his long public service made it fitting that his body should lie in the capital. We therefore decided to place it temporarily in a burial vault, and this was done.



The funeral ceremonies in Chicago were elaborate and impressive. The soldier element was naturally prominent. I saw that Mr. Cleveland and Mr. Olney took particular notice of this, for neither of them went to the front in '61, and I was interested in the effect on them of the many evidences of my husband's hold on his old army comrades, both rank and file. All along our route to Chicago the G. A. R. men had turned out strong. At Chicago, the entire Illinois Commandery of the military order of the Loyal Legion, over six hundred, met us. Never before nor since has the Illinois Commandery of the Loyal Legion as a body publicly appeared to pay its tribute to any man. Men who in 1888 had sung, "Good-bye, Old Grover, Good-bye," men who had deprecated my husband's entering the cabinet of a man who had employed a substitute in the war, turned out to show their loyalty to a government whose integrity they had saved and to whose perpetuity they were pledged. There were men like General A. C. McClurg, General McArthur, General Fitzsimmons, General McNulta, and General Walter Newberry; Major Blodgett, the brother of Judge Blodgett; Captain Stewart, post-office inspector of Whisky Trust fame; Colonel Pearson, who commanded the regiment in which he had enlisted as a boy, "Logan's old regiment"; lawyers by the score, like Colonel Huntington W. Jackson and Colonel James S. Cooper; judges, like Tuthill, Freeman, and Waterman—men before whom even the invisible government failed. Their message of condolence had been acknowledged before we left Washington, as the most appreciated of all.

It took me a year to make up my mind as to Mr. Gresham's final resting place. Inasmuch as my husband had given so much of his life to the preservation of the nation, it seemed to me that he ought to be buried in a National Cemetery. Many times we had ridden together through Arlington Cemetery. I decided on Arlington, and accordingly wrote President Cleveland that I thought Arlington

was the place, and that a certain lot near the Lee mansion, looking out over the Potomac and the city of Washington, was the desired spot. Promptly Mr. Cleveland and Secretary of War Lamont answered that the lot was at my disposal. In May, 1896, I started for Washington with Mr. Gresham's body, and May 15 reached the city and went directly to Arlington, where we were met by President Cleveland and the cabinet, and the final interment was made.

After the ceremony at the cemetery, I went to the Arlington Hotel, and soon Mr. Thurber, the President's secretary, and Sir Julian Pauncefote, the British Ambassador, and the members of the cabinet called, to pay their respects. The next day the President sent a carriage for us to come to Woodley, the Cleveland country place.

Two national conventions were then close at hand. The question was, Would the silver men dominate not only one but both? About thirty days before, Secretary of the Treasury Carlisle had been in Chicago and had made a sound money speech in which he controverted the coinage of silver at sixteen to one. Mrs. Carlisle told me that Mr. Cleveland would soon announce that he would be bound by the third term tradition and that Mr. Carlisle would be the candidate of the sound money men for president. The sound money men had not centered and did not center on Mr. Carlisle, and Mr. Cleveland made no announcement, but at that Woodley visit Mr. Cleveland expressed without reserve the apprehension he felt as to what would be the effect on the country if the silver men succeeded. I could not but recall the warning my husband had given him two years before. He was no longer assuming to dictate. He expressed his pleasure and astonishment when my son told him that "Tom" Taggart, John E. Lamb, Senator Voorhees' law partner, John W. Kern, A. G. Smith, and scores of others in Indiana and Illinois were sound money men and could be counted on to do almost anything he desired.

Cleveland then launched into an exposition of the financial relation of the coinage of silver, at sixteen to one, to gold, the actual value at that time being about thirty-three to one, that was illuminating and convincing, but his audience was limited. Men like Senator Voorhees, who was still the chairman of the Finance Committee of the Senate, the men from the South and West, would not go near him.<sup>1</sup>

I am not saying that Mr. Cleveland contemplated a third term, but I do say he understood the act of handling men and public questions. He could not be ignorant of the possibility of the use of his name as a candidate as a rallying standard for the sound money men, especially when suggested by "practical men." Notwithstanding the public rancor between Grover Cleveland on one side and Tammany and Senator Hill on the other, there always existed a certain connection between them. Daniel S. Lamont was this connecting link. At the time of which I write the three were in perfect unison. And Grover Cleveland was saying, as he said on that occasion, "Tell the boys they can not win with sixteen to one. The laboring men and the business men will be against them."

The last time I saw Mr. Cleveland he came to Chicago to deliver an address before the Union League Club on the 22d of February, 1906. He came to see me and I sat with him at a dinner. He was in declining health. He was still strong and cheerful, but he knew, and he knew that I knew, although neither of us said so, that his end was not far off. My own years were numbered, a fact to which I referred. Again he was most unreserved in his talk. One woman, after the dinner was over, asked me what Mr. Cleveland talked about. While no secrecy was enjoined, it was implied, so I did not enlighten her.

There was another public question in which Secretary of State Gresham participated that lived after him. That was the Venezuelan matter. That sense of justice and

<sup>1</sup> See Chapter XLV, especially pages 705 and 708.

fairness in Sir Julian Pauncefote, and the discernment of how to reach it, which was the real reason for the settlement of the Nicaraguan question, led Mr. Gresham to believe he could adjust the Venezuelan controversy without friction. This was also Ambassador Bayard's view, for in this connection and at this time he wrote privately to the Secretary of State: "Great Britain has just now her hands very full in other quarters of the globe. The United States is the last nation on earth with whom the British people or their rulers desire to quarrel, and of this I have new proofs every day in my intercourse with them. The other European nations are watching each other like pugilists in the ring." Of Sir Julian Pauncefote, Secretary Gresham wrote to Mr. Bayard: "While he is a firm supporter of British interests, he is candid and fights openly and is fair."

After all, it was only a question of boundary. England had been in South America, in English Guiana, for a hundred years, and is there yet. The dispute as to the boundary, between England and Venezuela, arose in 1887 while Thomas F. Bayard was Secretary of State. It again became acute in 1894. Realizing the hopelessness of contending with Great Britain in arms, the Venezuelan government and the speculators rushed off to the United States.

It is of record that on December 1, 1894, Secretary of State Gresham wrote to Ambassador Bayard, instructing him to state to the English government that—

England and America are fully committed to the principle of arbitration,<sup>1</sup> and this government will gladly do what it can to further a determination in that sense.

With a view to a peaceful settlement, Mr. Gresham was working, up to the time of his death, on "a statement of the case." He said he believed he could make a statement

<sup>1</sup>Speech dedicating the Grant monument. "It was the successful leader of our armies in our greatest war who took the lead in bringing the civilized world to a practical recognition of the value of a peaceful arbitrament of international disputes, and the Treaty of Washington is a monument to his memory which will outlive those of bronze and stone. Its moral influence extends infinitely beyond the immediate parties to it, or the age in which it was negotiated."

of the facts and the controversy and advance conclusions that the British government could accept, or come back and say, "You have suggested it—we will arbitrate." Night after night he poured over maps, papers, and different propositions, and all the data extant on the Monroe doctrine. The final rough draft was recast and rewritten a number of times. "The legal and judicial training," the British Ambassador said, "which enabled the Secretary of State to go to the bottom of a question and look through a treaty with facility and ease, were brought into play." He discussed the question not only with President Cleveland but with members of the Senate and House and with newspaper men. ("There was always at least one newspaper man," he said, "you could get to stand for right and justice and who was withal discreet.") Isadore Strauss was one of the congressmen whose counsel and advice was sought. Afterwards one of the editors of the *New York Evening Post*, in writing of these days, said:

Secretary Gresham was very diligent in circulating from the State Department copies of the Monroe Doctrine as enunciated by Monroe in defense of his abstention from meddling as the jingoes wished him to do in the Nicaragua affair. Thousands of copies of a pamphlet of its own and thousands of copies also of the *Evening Post* reprint of Professor Moore's essay on the Doctrine, were sent out by the Department.

My husband was shaping his note for transmission to Ambassador Bayard when sickness and death intervened. Richard Olney, the Attorney-General, became Secretary of State. July 17, 1895, Mr. Olney sent his note, which was practically an ultimatum, through Ambassador Bayard, to Great Britain. Its statement followed the line of fact my husband had outlined so closely that Isadore Straus said, "Mr. Olney has stolen your husband's thunder." "No," said I, "there was to be no ultimatum as my husband had prepared it, and Mr. Olney and President Cleveland are entitled to all the credit for such a State paper."

Mr. Bayard assumed the responsibility to state, when he delivered Mr. Olney's note to the British Foreign Office, that it did not really mean what it said — War. Not, however, until Mr. Cleveland followed the note up with a message to Congress on the 4th of December, 1895, did the correspondence become public. Mr. Cleveland's message was a reiteration of the ultimatum. It electrified the country. The jingoists and the newspapers went wild. The Republicans almost universally said they were Cleveland men. Ex-President Harrison said he would step into line with the brother from Georgia under the order, "Guide center forward," against "my ancient enemy." Senator Henry Cabot Lodge, who happened to be temporarily sojourning in London, kept the cables hot with demands for immediate war.

But all was changed in the twinkling of an eye. The New York *Evening Post* and *The Nation* stood by their guns. Heretofore they had been Cleveland's strongest and ablest supporters. Now they denounced the note and the message as a departure from the Monroe Doctrine as its author had promulgated it and as it had been interpreted by Secretary Gresham. The message was a bid for a third term, and Secretary Olney had gone over to the speculators.<sup>1</sup> Soon, to use the *Evening Post's* own language, "Secretary Olney turned tail." There was an arbitration, but the Venezuelans were defeated.

I have written this not by way of criticism of Mr. Cleveland but to make clear Walter Q. Gresham's position, and to emphasize the power a single private citizen or a single editor may exert in the Republic. It is also due to Mr.

<sup>1</sup> January 9, 1896, *The Nation* said: "The speculators, as we see, expected a more vigorous foreign policy about this time. We have reason to believe that some of them, including United States senators who are to sit on these questions of peace or war, waited on Secretary Gresham not long before his death to urge this policy on him; but being a clear-headed man of peace, he not only declined their proposals, but took the liberty of pointing out to them the impropriety of their having anything to do with an affair which was likely to become a matter of international controversy. We are far from insinuating that they ever made any similar application to Mr. Olney, but he certainly did just what they wanted. The jingo poison prepares a man's system for the speculation bacillus."

Cleveland to say, that after it was all over he claimed it was the threat of war that made Great Britain accept arbitration, but the fact is, she did not suggest it. Pressed to the wall, Mr. Olney said, "Mr. Gresham has suggested arbitration, whereupon Great Britain acquiesced."

In his recollections of Grover Cleveland, George F. Parker says, in discussing the Venezuelan incident:

It always seemed to strike him with surprise when in later years I told him—apparently in jest, though really in earnest—that he was the father of the spirit of imperialism which had grown up after the war with Spain. He himself had done so much to controvert that foolish, unnecessary, and hurtful conflict, that he could scarcely conceive that what he saw was only the logic of his own acts.

Here the practical side again suggests itself, for Grover Cleveland was an eminently practical man. Mr. Cleveland was then contesting with William Jennings Bryan for supremacy in the Democratic party. An ultimatum to Great Britain, or a twist of the lion's tail, and his party might abandon silver at sixteen to one. That soldier funeral came just at the time to impress Mr. Cleveland and Mr. Olney.

By no act or word of his did Walter Q. Gresham advance the policy of imperialism which he believed would be our undoing, just as it had wrecked the Roman republic. "Despotisms can and do exist under popular forms." Talk about the United States becoming a world power! She had been one ever since July 4, 1776. The Declaration of Independence and the success of the American Republic were the great contributing causes of the French Revolution, which with all its blood and counter-revolution made much for the rights of man the world over.

To a critic who wanted "a great foreign policy," Mr. Gresham answered:

A free government cannot pursue an imperial policy. We acquire territory with the sole expectation of bringing it into the Union as a State, the equal of the other States.

Secretary of State Gresham's chief work in connection with Germany was to advise<sup>1</sup> and urge upon President Cleveland that he recommend to Congress the withdrawal from the Tri-Parte Treaty of 1889, whereby the United States, Great Britain, and Germany, because of trade relations, had agreed jointly to maintain Malietoa as King of the Samoan Islands. The death of King Malietoa in 1898 ended an anomalous situation.

To another friendly critic he wrote:

If we take Hawaii, we must defend it just as we should our own Atlantic and Pacific ports. But aside from this we need more and better ships.

To another:

The Democrats in the Senate and the House are furnished with ample material but they lack the ability or the courage to use it.

I would that Thomas F. Bayard were in the Senate. Senator Gray possessed the ability but he shrinks the contest.

To his associates in the administration, according to the Secretary of the Treasury, John G. Carlisle, Secretary of State Gresham said, in speaking of the Venezuelan incident, "I have come over to you; gentlemen, come up to the best traditions of the Republic."<sup>2</sup> The Secretary of State was then deprecating war. Because we won our independence

<sup>1</sup> May 9, 1894, on a report on the Samoan situation Secretary of State Gresham said to President Cleveland:

"It is in our relations with Samoa that we have made the first departure from our traditional and well established policy of avoiding entangling alliances with foreign powers in relation to objects remote from this hemisphere. Every nation, and especially every strong nation, must sometime be conscious of an impulse to rush into difficulties that do not concern it except in a highly imaginary way. To restrain the indulgence of such a propensity is not only the part of wisdom, but a duty we owe to the world as an example of the strength, the moderation, and the beneficence of popular government."

<sup>2</sup> MY DEAR MR. ROSS:

November 9, 1894.

The leading editorial in the Indianapolis *News* of the 7th is the best that I have seen on the result of the late elections. I wish every so-called Democratic leader could read it. I will hand it to the President to-morrow.

The people seem to have thought it necessary to strike the Democratic Party with clubs not stuffed. Will it recover from the blows?

I imagine you will say it may if it becomes more honest.

Faithfully yours, W. Q. GRESHAM.



with the sword did not seem to him any reason why we should rush into war on the slightest provocation. He certainly had seen enough of the desolation and ruin wrought in our own land to want no more of it. It was a subject I felt competent to discuss with any man, especially with the men who had had an opportunity for four years to go in but did not do so. As General Sherman truly said, "War is hell." In its ultimate analysis it is a crime against civilization and against the rights and interests of the individual man and woman.<sup>1</sup> To that view Walter Q. Gresham had come. We had jingoists then, but then, as now, not all jingoists were fighters.

While my husband had become an advocate of peace he was not a non-resistant. He would and could fight. He had that knowledge of mechanics and machinery which is essential to the successful prosecution of a modern war. Never would Walter Q. Gresham have attempted to meet a submarine simply with a State paper. And that disregard which General Grant had taught him for the elementary maxims of war when they were plainly an outgrowth of conditions radically different from those to be confronted, was proof conclusive that he would "flex" the rules of war as he had "flexed" the rules of equity. He had reckoned the power of a single man, of a few men, using modern explosives.<sup>2</sup>

I remember the interest my husband took in the Chicago Haymarket riot. A rich Italian, Count Malatesto, with headquarters in London, was the head of the anarchists, who had proclaimed their purpose of killing off all governmental officers and of taking possession of government and industry. The night of May 4, 1886, a single bomb killed eight policemen outright and wounded and disabled sixty-eight, practically annihilating the first platoon. And the truth is, the oncoming platoons of police all but broke

<sup>1</sup> See pages 272, 282 and 283.

<sup>2</sup> Witness his advice and the exploit of Horace Bell as set forth in Chapter V. Also, the despatch in the *Alliance* affair, page 786.

although supported by three regiments of the Illinois National Guard, a battalion of colored troops, and a battery, all under command of General Charles Fitzsimmons.<sup>1</sup> "Fitz" had passed the word to his colonels, they in turn to the captains and they to the men. Every man responded to the call. There is not a word in the record about these troops. But for every possible contingency they were prepared. There were officers and men in the streets ready to attack any force that might offer resistance to the regiments as they came out of the narrow doors of their armories in columns of fours. They even had men at Haymarket Square. The police had to advance or be disgraced. After the Supreme Court of Illinois sustained the death penalty against eight of the men convicted of the murder of policeman Mathias Degan, Governor Oglesby commuted the sentence of two of them, Fielden and Schwab, to imprisonment for life. General Benjamin F. Butler then claimed, in a habeas corpus proceeding before United States Circuit Judge Gresham, that Fielden and Schwab were restrained of their liberty by the State of Illinois contrary to the due process of law clause of the Fourteenth Amendment to the Constitution. "All Fielden and Schwab did," said General Butler, "was to indulge in the constitutional right of free speech." "But, General, they were something more than mere gabblers," said the Judge, and so they were remanded to the custody of the State.

One of the stories, I remember, at a dinner at which Carter H. Harrison, the elder, was a guest, was of his trip around the world. At Berlin, Prince Bismarck sent for Mr. Harrison for the purpose, as Bismarck said, of learning of the Chicago Haymarket riot, from the man who had been mayor of the city at the time. Bismarck said that it had been a problem with him whether any organized body of

<sup>1</sup> General Fitzsimmons, and Lieutenant Colonel George V. Lauman and Colonel Taylor E. Brown, a lieutenant and a captain respectively in the First Illinois, I. N. G., at the time, the latter two still living, are among our authorities for these statements.

men, police or soldiers, would stand in the streets against an attack of a few men armed with dynamite in the shape of bombs. Had the Chicago policemen given way at Haymarket Square when the first platoon was annihilated by a bomb, it might have been the end of civil government as we understand it. The fact that the oncoming platoons were able to disperse the mob, solved the problem, concluded Prince Bismarck.

As illustrating the difference between the judicial and the pardoning power, which is in the executive, Walter Q. Gresham was one of the men who had requested Governor Oglesby to commute the anarchists' sentences.<sup>1</sup>

In the ultimate analysis, according to Judge Gresham, society and government still rest on force. "The consideration that international law is without a court for its enforcement, and that obedience to its commands practically depends upon good faith instead of the mandate of a superior tribunal," was one of its defects. The chancellor or judge without a sheriff, a policeman, or a soldier, to enforce his lofty utterance, would be an object of ridicule and scorn.

Before he entered the State Department, Walter Q. Gresham had contemplated the airship as an engine of war, the Gatlin, the Maxim, or the machine gun, gun cotton, dynamite and every form of destruction. He talked about these means of warfare with regular army men like General Schofield while stationed in Chicago and when in command of the army at Washington; with Colonel H. C. Corbin, afterwards General Corbin of Spanish-American war fame; with Captain A. M. Fuller, and with many other army officers and Union and Confederate veterans. He would get his army from the mechanics, the artisans, the farmers who had become mechanics through the use of labor-saving machinery; and the fact that machinery would

<sup>1</sup> Note from Grant Monument speech: "Their shameless and insidious attacks on free institutions are infinitely more dangerous than the revolutionary teachings and practices of a comparatively few visionary and misguided men and women in our large cities."

make each succeeding war more and more deadly was to him a reason why truth and candor should take the place of finesse and diplomacy.

I heard discussions with men like General Dodge, who was close to Jay Gould, and General John McNulta, and others who had served with distinction during the Civil War, who were insistent on the necessity of being prepared to meet "Great Britain's descent on the New York and New England coasts," and of the consequent importance of our "taking Canada." General Dodge was a corps commander of the Civil War.<sup>1</sup> An able civil engineer, the builder of the Union Pacific Railroad, he never was on the side of the people. Judge Gresham argued:

"We would soon starve Great Britain into submission. Our first act would be to cut off her supply of grain and beef. Then, by confiscating the billions of English capital invested in this country, we could do her still more damage, and more than recoup the cost of the war on our part. We don't want Canada. We could take it in thirty days. Every Irishman in the United States and almost all in Canada would instantly respond to a call to arms. In Illinois alone, outside of the foreign element, I could organize 100,000 men in a week's time. But because of all the injury we could inflict on the British Empire and her people is a conclusive reason why we should not provoke her to a contest, and by no act of mine will it be precipitated. War at this time is not in the interests of the American and English people. It would be a crime."

From the start the British Ambassador and Secretary of State Gresham had been in accord. Sir Julian Pauncefote was on the mastiff order and a true Democrat at heart. I heard many discussions between them. It was agreed that the greatest question of the age was the economic or industrial, that of capital and labor. As bearing on this problem the British ambassador was greatly interested

<sup>1</sup> See pages 308 and 309.

in the possible effect of the labor-saving device, as it had come to the Secretary of State in the patent litigation. I quote from a letter written by Circuit Judge Gresham on August 1, 1892, to Morris Ross of Indianapolis:

The labor question has come to stay; it cannot be ignored. We are living under new conditions, conditions utterly unlike anything in the past. Labor-saving machinery has given capital an advantage that it never possessed before. What is an equitable division of the joint product of capital and labor, and who is to decide the question? I fear that the settlement of the controversy will be attended with serious consequences. The laboring men of this country have intelligence and courage, and they firmly believe that they are oppressed. They are growing stronger daily, and unless capital yields, we will have collisions more serious than the one which occurred at Homestead. The right to acquire and hold property must be recognized. No civilization of the past has amounted to anything that did not recognize that right. But those who employ labor seem to think that only property rights need protection, and that laborers are entitled to no more sympathy and consideration than the machinery which they attend. Employers go through their forms of worship in a perfunctory way, not heeding the injunction that we should love our neighbors as ourselves. It seems to me that labor will triumph in the near future, but will it use its power wisely?

Mr. Gresham said to the British Ambassador that the labor-saving machine had satisfied him as a patent judge, that the productive power of the world would be increased, had increased beyond the capacity of the world to consume. What would be done with the surplus, and how to keep the people of the various countries employed, prosperous, and happy at home, were the great questions to be met. Tariff laws would protect the home market, but home production exceeded the home consumption. How was the surplus to be disposed of, with at least a dozen strong nations with a large surplus competing for the single world market? This world-wide problem was to be solved

on principles of righteousness and justice, and the same was every day becoming true of the domestic problems.

Charles Schwab, as the head of the steel trust, following the Spanish-American War justified selling steel products in Germany cheaper than in the home market. The creation of a surplus over and above what the United States consumed was the result of keeping the mills running in order that men might be employed all the time in this country. Germany was not long in retaliating with "tariff wall" laws that permitted her merchants and manufacturers to combine in order to sell her surplus in South America and on longer time than Englishmen and Americans could or would extend to the purchasers. I am no more justifying Germany than the former head of the steel trust. Under the guise of keeping the mills running was he not really thinking more of his output and machines than of the men? I am not advocating a higher wage scale than the men in the steel mill received in the days following the organization of the steel trust. I am not suggesting that the man who works as a mechanic with his hands, although his intelligence may be superior to that of the financial man, is simply to be considered as a strata in our system of society, which, as my husband said, "is based on property interests." The latter are to have a voice in our government, as they have among the dynasties of the old world, but I am suggesting, as Walter Q. Gresham said, "that the way to finally dispose of the surplus production of the civilized nations of the world is not through war."

"Caught up on courts martial"—one of the most important factors<sup>1</sup> of the war—"wherever I go," indicates that there was not that entire absence from the technicalities of the law that some of Mr. Gresham's kindly critics said his four years' service in the field entailed, while, on the other hand, it suggests the judicial quality. But as to whether the judicial quality really existed will be rested

<sup>1</sup> See pages 183-185.

on the testimony of James L. High, a scholar and lawyer of wide experience, who, as the author of many standard legal textbooks — "High on Injunctions," "High on Receivers," "High on Extraordinary Remedies" — reviewed the work of more judges than any man of his time. At the memorial services of the Chicago Bar Association, June 11, 1895, Mr. High said: "If I were asked to name the most marked and distinguished feature of Walter Q. Gresham's judicial service, the answer would be, that instinctive sense of justice which he brought to the determination of every case. *With him the sense of justice was an instinct, not an acquirement.*" The proposition that justice was the end and aim of government, Mr. Gresham carried into the State Department and into our international relations so far as lay in his power.<sup>1</sup>

That Walter Q. Gresham was no diplomat, only a judge, but possessing withal enough popularity and force of character to render his conclusions or judgments potential, was a criticism he enjoyed. That truthfulness which we have shown to have been one of his early characteristics, he carried with him into his judicial life and into the State Department.

From his own statement John W. Foster had some difficulty in qualifying as a jurist.<sup>2</sup> He does not mention that he was postmaster at Evansville, Indiana, for six years after the war. Experience as chairman of the Indiana Republican State Central Committee in the early '70s, under the tutelage of Senator Oliver P. Morton, undoubtedly tended to qualify him for the school of diplomacy. But experience in that line was not and is not recognized as a qualification for admission to practice before the Supreme Court of the United States. Its rules require as a condition precedent to admission and practice before it that

<sup>1</sup> See page 357.

<sup>2</sup> John Henry Wigmore, author of the best work on the Law of Evidence, instructor in the Law of Evidence in the Law School of the Northwestern University, says: "The international lawyer without that knowledge of commercial affairs acquired in the actual practice of the law is not the man to adjust the difference that will exist when the present world's war comes to an end."

the applicant has been for three years a practitioner before a court of last resort of some State or before the Supreme Court of the District of Columbia. That the applicant is qualified may be shown by certificate or by the oral statement in open court of an attorney well known to the justices of the Supreme Court. When Mr. Foster left the diplomatic service in 1881 and settled down in Washington to practice international law, he was confronted with this rule of the Supreme Court. He had never been admitted to practice before the Supreme Court of Indiana.

November 15, 1881, is the date of the admission of John W. Foster to practice before the Supreme Court of Indiana. The order of that court recites that Mr. Foster was present before it. The fact is, he was then in Washington. Not three years, but only thirteen days later, namely, November 28, 1881, he was admitted to practice before the Supreme Court of the United States. The record of that court is that he was admitted as of the District of Columbia on motion of Solicitor-General Phillips. The records of the Supreme Court of the District of Columbia show that John W. Foster never was admitted to practice before that court, so that in order to get admitted to practice before the Supreme Court of the United States a diplomatic statement was made either by or for him. We had been on terms of friendship and intimacy with Colonel Foster and his family, as he states in his "Memoirs," but "that indefinable feeling" arose long before 1895. Diplomat that he was, John W. Foster in 1888 decried Walter Q. Gresham for taking to the path on which he was headed.

In response to my request Colonel Foster does not produce the letter in which, as he states in his "Memoirs," Judge Gresham manifested a warm desire to have a conference with him, Colonel Foster, after the announcement was made that Judge Gresham was to be Secretary of State. After he retired from public office and active business, Colonel Foster says his papers and letters were destroyed.



February 18, 1892, the following letter, which was the first communication that had passed between the two friends in a long time, was received at our residence in Chicago:

(*Personal*)

DEPARTMENT OF STATE  
WASHINGTON, February 16, 1893

MY DEAR JUDGE:—

I have refrained from writing you till the report that you are to be my successor should be, as it now seems to be, sufficiently confirmed. I now desire to assure you that no other appointment could have been so gratifying to me personally, and I can heartily congratulate Mr. Cleveland upon the selection.

I am very sorry that I shall not be able to be there and induct you into office, as I expect to sail on the 25th instant for Paris to attend the Tribunal of Arbitration.<sup>1</sup> I hope, however, I may be of some service to you before I go, and shall hold myself ready to do anything I can. I shall be in New York on Friday, the 24th. Why cannot you happen there on that day?

I would not presume to say or write anything about political or diplomatic subjects, but possibly my experiences in the organization, personnel, and management of the department might be of some use to you. I have "views" on those matters which during my temporary incumbency I have not thought best to put into practice to any great extent.

But if I do not see you before I sail, I send you now my most hearty good wishes for great success in this your new post of duty, and assure you that if in any way or at any time I can do anything to promote your success, it will be a great pleasure for me to do so.

I expect to leave here to-morrow to spend Sunday with the children in Watertown, but shall be in Washington on Monday.

With congratulations and best wishes to Mrs. Gresham, I am, very truly,

Your friend,

JOHN W. FOSTER.

Before the receipt of this letter, it had been decided that prospective Secretary of State Gresham, and John G. Carlisle, prospective Secretary of the Treasury, should, as

<sup>1</sup> See page 717.

they did, meet President-elect Cleveland at Lakewood, N. J., February 22, 1893. My recollection is that a telegram answered Secretary of State Foster and arranged the meeting at the Fifth Avenue Hotel, New York, February 24, 1893. Enough has been said of that Lakewood conference to show that the three men attending it had an understanding as to what would be the policy of the new administration, also how much of the conclusions of that conference were communicated to Mr. Foster.

I have made more mention here of Colonel Foster than of any other of my husband's critics, for he put him in an enduring record.

The two senators from Massachusetts, George Frisbee Hoar and Henry Cabot Lodge, were Mr. Gresham's chief opponents in the Hawaiian affair. They had looked on him with favor when he had been a Republican. They led New England. And coming, as they did, from the cradle of popular government, my husband thought their opposition was most unfair, as it was virulent. Much that Senator Lodge said, he obliterated from the record, and Senator Hoar's most enduring work is in the efforts he made in resisting the policy of imperialism that he stood for in Hawaii but opposed in the Philippines.

The sending of James H. Blount as a commissioner to Hawaii to investigate and report to the President his findings and conclusions, without the advice and consent of the Senate, meanwhile paying him out of the contingent fund of the State Department, was resisted and criticized in the Senate by Senators Hoar and Lodge as being in the teeth of the Constitution. Twenty years later, on the floor of the United States Senate, Senator Lodge said it was President Wilson's right to send special commissioners or agents to Mexico.

While the question of Woman's Suffrage did not become acute in my husband's lifetime, he was disposed, as a matter of justice, to give women the ballot, although he was not

altogether satisfied with the wisdom of such a departure. Unlimited negro suffrage had been a mistake for the mass of the negroes as well as to the body politic. My opinion is that it will be a mistake for the mass of the women.

For the rights and integrity of the little nations Walter Q. Gresham was one of the first to stand. The Nicaraguan minister said to me, "I am now received with the same consideration at the State Department as is the British minister."

It was the judicial training that would have restored the Hawaiian Queen. While Mr. Gresham recognized the practical side of a law suit, the principal for the guidance of the judge which he had learned as a boy from Lord Mansfield's decision in the *Sommerset* case,<sup>1</sup> he would have followed in Liliuokalani's case. "Do justice though the heavens fall." Thus Lord Mansfield answered the argument of the lawyer of expediency, in simply liberating a half-civilized African.

What Lord Mansfield had in mind, according to my husband's interpretation of that decision, was that the way to keep the heavens, if not the State, from falling, was to do justice in the particular case because the precedent for good or evil might be of lasting importance to the race. Doing justice in Hawaii would have prevented the United States from adopting the colonial system. But having adopted the colonial system, Walter Q. Gresham could and would have defended it until the people would go back to the government of the fathers. I have lived long enough to see Benjamin Harrison oppose the policy of imperialism he inaugurated, or permitted to be inaugurated, in Hawaii; to see the tariff reduced; and to see the Republican party hopelessly split asunder. Due in part to the efforts of Benjamin Harrison, and of his appointee to the Supreme Bench, David J. Brewer, our imperial policy is only provisional. It was the support General Harrison, and Justices Brewer and Harlan, gave to Republican Senator W. E.

<sup>1</sup>See pages 35-38.

Mason of Illinois that the unconditional ratification of the Paris treaty, whereby we acquired the Philippines, through the influence of William Jennings Bryan, was defeated. There were Democratic senators who were for unconditional ratification. Had the Democratic senators remained united the Paris treaty would have been rejected. The Platt amendment, which kept our faith with Cuba and without which the Paris treaty could not have been ratified, is a fact in the light of which that treaty is to be read. Even now the Republicans will not say that they will never give up the Philippines. As Walter Q. Gresham concluded the letter of October 18, 1894, on the Hawaiian situation,—“Can the United States consistently insist that other nations shall respect the independence of Hawaii [that is, the independence of the small nations] while not respecting it [the rights of the small nations] themselves?” The ability to talk without acting, which, Mr. Gresham admitted to some of his confidential Republican friends, was a characteristic of many of the Democrats of post-bellum days, still subsists.<sup>1</sup>

From a favorable place right over the stage, I watched the Taft-Roosevelt convention of 1912. My sympathies were with Mr. Taft, but from Mr. Roosevelt's standpoint and premises, his course was logical and patriotic. According to statements made to me by men who were close to Mr. Roosevelt, he hesitated not a moment when it was put up to him that the Republican leaders thought they had tied his hands, and that it was his duty as a patriot and a man to walk out. Among his supporters were the

<sup>1</sup> The Democratic platform of 1912, as to the Philippines, was as follows:

We re-affirm the position thrice announced by the Democracy in the National Convention assembled against a policy of Imperialism and colonial exploitation in the Philippines and elsewhere. We condemn the experiment in Imperialism as an inexcusable blunder, which has brought us weakness instead of strength, and laid our Nation open to the charge of abandonment of the fundamental doctrine of self government.

We favor an immediate declaration of this Nation's purpose to recognize the independence of the Philippine Islands as soon as a stable government can be established, such independence to be guaranteed by us until the neutralization of the Islands can be secured by treaty and other forces. In recognizing the independence of the Philippines our Government should retain such land as may be necessary for coaling stations and naval locations.

grandsons of Joseph Medill, and John T. McCutcheon and George Ade. By his cartoons and accompanying comments in advocating the claims of the "Rough Rider," Mr. McCutcheon placed the "Chicago Tribune" in a position from which it could not recede. His most effective picture, perhaps, was that of Elihu Root as the permanent chairman of the convention with a "stolen gavel." At one swipec, a picture of the directors of the Standard Oil Company, John D. Rockefeller presiding and entertaining a motion to move the headquarters of the "Trust" from 26 to 23 Broadway and print new stationery in order to comply with the decree of ouster of the Supreme Court of the United States<sup>1</sup> (the stock meanwhile advancing on the New York Stock Exchange), Mr. McCutcheon advanced the proposition of the "Judicial Recall," one of the planks in the Rough Rider platform, and revealed his own force, which Judge Gresham always rated more than genius in public affairs. At that Terre Haute<sup>2</sup> conference, in 1892, Judge Gresham said, "Voorhees and Judge Robinson, you are not making the right kind of speeches—these long winded, polished, political essays do not make a vote. What you want to do is to make jury speeches." At either Senator Voorhees was *par excellence*. It is "punches," and "licks"<sup>3</sup> that count at the bar and on the hustings, in public affairs, on the battle field and in the prize ring,<sup>4</sup> and the same is true of journalism. If the reader doubts this let him or her read Justice Harlan's dissenting opinion<sup>5</sup> in the Standard Oil case, in which he handled Chief Justice White's opinion in that case after that fashion. Justice White dissented from Chief Justice Fuller's opinion, declaring the income tax of 1894 unconstitutional. Either justified McCutcheon's cartoon.

I have already adverted to that income tax decision,

<sup>1</sup> See pages 632 and 655.

<sup>2</sup> See page 670.

<sup>3</sup> See page 676. Major Gen'l Sir Frederick B. Maurice. "History of the War."

<sup>4</sup> See page 794.

<sup>5</sup> Standard Oil vs. U. S. 221 U. S. 1; see page 82.

and to the fact that Walter Q. Gresham thought that such a tax would be constitutional,<sup>1</sup> in time of peace and pressed for it in the Wilson Tariff law. While President Cleveland did not advocate an income tax, he never questioned its constitutionality.<sup>1</sup> Most of his New York friends, as well as his New York democratic opponents like Tammany and Senator Hill, opposed such a tax as unconstitutional. Senator (soon to become Associate Justice) White was supposed to favor an income tax. Ex-Secretary of the Treasury Benjamin H. Bristow<sup>2</sup> and Joseph H. Choate as attorneys for the New York bankers denounced it to Secretary of State Gresham as "Populistic."<sup>3</sup> The same argument they afterwards made in the Supreme Court. After Senator Hill had defeated in turn the confirmation of two of Mr. Cleveland's friends, the eminent New York lawyers, Peckham and Hornblower, for Associate Justice of the Supreme Court, Secretary of State Gresham said, "Send in Senator White's name, he has been a member of the Supreme Court of Louisiana and senatorial courtesy will force Senator Hill to accept him." I heard William Jennings Bryan use Justice White's dissenting opinion in getting the Democratic nomination in 1896.<sup>4</sup> That and Justice Harlan's dissenting opinion made the 16th or Income Tax Amendment inevitable.<sup>5</sup> Justice Harlan said an income tax is the fairest of all taxes while Justice White said it had the sanction of the illustrious man who was first president of the Republic. As to the "punches" and "licks," Walter Q. Gresham said, "I can and must stand them."<sup>6</sup> But as it turned out, he did not get as many as he expected, when he broke away from the Republican party due perhaps to the belief that he could stand all that might be landed and strike back still harder.

I cannot but help recurring to my husband's desire to walk out of the Convention of 1888, as then expressed to Joseph

<sup>1</sup> See pages 714-715.

<sup>2</sup> See pages 318, 437 and 456

<sup>3</sup> 157 U. S. 429 at page 532. See also pages 620, 626 and 715.

<sup>4</sup> See pages 708-711.

<sup>5</sup> See pages 620-626.

<sup>6</sup> See page 670.

Medill. From simply a material standpoint, the young men made no mistake. I say this not by way of criticism of the elder or grandfather, but as a recognition of the fact that the world is moving and it takes young men for action.

A hotel was no place for the Secretary of State to live, said some of our critics. That objection had been made by me to my husband's accepting a place in Mr. Cleveland's cabinet. Carl Schurz approved going to a hotel, although it involved declining the gift of a house and of the sum of \$50,000 properly to maintain it, from kind and well-meaning friends. In those days the Arlington Hotel was made up in part by including what were once private homes. We had part of what had been Charles Sumner's residence. To our west was a lawn and then the handsome residence of the Misses Stewart who had been much in Washington society, especially in Arthur's time. One morning, T. E. Roessell, the proprietor of the Arlington, said to his chief man, "Bennett, step over to the Misses Stewart, tell them I wish to enlarge my hotel, and will they please put a price on their lawn." Mr. Bennett was not long in returning with the message: "The Misses Stewart present their compliments to Mr. Roessell. They desire to extend their lawn. Will the proprietor of the Arlington please put a price on his hotel?"

I have already mentioned the American game of which our Southern brother was so fond. The newspaper men said, "Gresham got the most of the chips." More the manifestation of a kindly feeling for the Secretary of State than the literal truth, was this statement of "the boys." It was around that board at "Chamberlain's" that Senators Quay and Vest, at two o'clock in the morning, had agreed to kill the Force Bill and pass the McKinley Bill. After the consummation of that deal there was no just ground for criticizing Walter Q. Gresham for withdrawing his allegiance to the party that had been founded on the theory

that the rights of man, even though he be a black man, come "before the rights of things."

Senator Gray of Delaware, a very intimate friend, frequently dined with us. For a long time there would be one, two, or three Southern men, members of the Senate or House, with us for dinner—men like Speaker Crisp, of Georgia, Senator Walthal of Mississippi, Jones of Arkansas, Daniels of Virginia, and I believe every Southern senator excepting Senator Morgan of Alabama and Senator Gorham of Maryland. Frequently men from the South who were not in the Senate or House, especially any ex-Confederate who came to town and called at the State Department, were brought home to dinner. The Southern people had received us most cordially, and naturally we returned their warmth. It was thus even in Mr. Arthur's time. Then it was that Mr. Gresham was more intimate personally, aside from his army friends, with the men who had worn the gray than with those from any other section. Sometimes he would say, "If the men who did the fighting can get together, the churchmen North and South ought to resume their old relations."

These dinners were purely social ones. They were my husband's chief means of relaxation and recreation. It was the way he had done while on the bench, bringing lawyers on both sides home to dinner. I was the only woman present. There was no politics, in the small sense, talked, but every legal, religious, moral, military, and economic question that men are interested in was discussed. And there were good stories by the score that have never been in print. One of Senator Walthal's I must relate, because it illustrates the loyalty of the Southern negro to the white man and why negroes are to-day on the pension rolls of some of the Southern States.

"In one of the few battles in which we got the worst of it," the Senator said, "we made a rather hasty retreat, leaving baggage and servants behind. Two days later,



when safe in camp but short of provisions, William, my body servant, turned up on foot, but loaded down with all sorts of plunder he was carrying. As soon as he saw me he exclaimed with great indignation, 'If you-all had not been in such a hurry to get away we could have saved a li'l more o' dis stuff.'"

In establishing and maintaining intimate and cordial relations with his new party associates, Walter Q. Gresham was as successful as on the diplomatic side, although standing for right and justice in a way never before urged in international affairs. We have shown how he had been received by the rank and file of the Northern Democrats. As time went on that cordiality increased. Murphy, the Tammany Senator of New York, said that he wanted Secretary Gresham for President. Senators Voorhees and Turpie of Indiana, and Thomas Taggart, the chairman of the Indiana Democratic State Central Committee, made the same avowals. I have described the Democratic National Convention of 1896. On the platform, in the face of that assemblage and before any nomination had been made, Senator Jones of Arkansas, chairman of the Democratic National Committee, told me, "Had Judge Gresham lived he would have been our man." I mention this simply to meet the claim that was put forth that it was a personal and political mistake for Walter Q. Gresham to change his party allegiance—he never changed his principles—and to become Secretary of State under President Cleveland. He lost not the confidence, friendship or support of newspaper men of mature years, like Joseph Medill and Morris Ross, nor of youths like James P. Hornaday. I know that Mr. Gresham intended that portfolio to be his last official position. That he did not want, and would not take, a place on the Supreme Bench when Justice Blatchford died early in the second Cleveland administration, the correspondence with Justice Field, ex-Senator Doolittle of Wisconsin, and others, which is still in my possession, is

conclusive. August 15, 1893, Walter Q. Gresham said, in answer to a letter from Justice Field, "I assure you I am holding my last official position," and he insisted that no suggestion be made by Justice Field, nor by others, to Mr. Cleveland to appoint him. When the New York senators, Hill and Murphy, defeated the confirmation of eminent lawyers like Rufus Peckham and William B. Hornblower, expressing a willingness at the same time to accept Gresham, it was the latter who said to President Cleveland, "Nominate Senator White of Louisiana." Under senatorial courtesy, the Senate never refused to confirm the nomination of one of its own members to an office to which the President might name that senator. White was promptly confirmed.

During the progress of the Chinese-Japanese War both Kurino and Yang-Yu, the Japanese and Chinese ministers, were in daily conference with my husband. He was much criticized by even as good a friend as Carl Schurz because he required our legation in Peking to give up two Japanese students who had entered the lines of the Chinese army as spies. In order to escape recapture, the Japanese entered our legation. After they were delivered up to the Chinese they were executed. The Japanese government made no complaint, for it realized that the right of asylum which was accorded to political offenders could not be a precedent in such a case. To restore the two spies to Japan would have made our government a party to the surreptitious gaining of information. That Mr. Gresham viewed his action in this case with confidence, a few lines from a letter to Noble C. Butler under date of January 13, 1895, will suffice to show: "The correspondence on the subject of the two Japanese spies in China will go to the Senate next Monday. I have no fear of the result. My position there is as unassailable as in the Bluefields case."

Schurz, who had been a revolutionist in Germany, argued that spies in time of war had the same status as political offenders or revolutionists. The right of asylum in the

case of spies, however, was denied by Secretary Gresham, and when the two Japanese were given up and executed, the former intimate relations with Mr. Schurz ceased. Secret diplomacy was not part of Mr. Gresham's policy, and he said he could always get at least one newspaper man to stand for "right and justice," who withal was discreet.

What Walter Q. Gresham had in mind, in the event that he survived the four years in the State Department or, in the meantime, broke with Mr. Cleveland, was to go back to the farm and deliver a series of lectures on Domestic and International Law in connection with the University of Chicago. This was his declared intention. "Without entangling alliances" of any kind, that there would have been something about "*right and justice*" in domestic and international relations not exactly according to the conventional thought, those who have followed these pages will admit, even though they might criticize.

As Lamartine said, "Besides, these pretended divisions of power are always fictitious; power is never really divided." It may be in the King or in the Parliament, and if the latter is composed of two assemblies it is in one or the other, it is never in both; it may be in a victorious general as was Napoleon long before he was crowned Emperor, when he mowed down the commerce of Paris with his cannon; it may be in some individual of lofty understanding and commanding conscience; or it may be in a simple lawyer advancing a principle of morals, especially if that principle be recognized in the fundamental law of the land.

Wendell Phillips appealed to the honest men who would come hereafter when he could not pull the statesmen of this time away from that pro-slavery constitution. Walter Q. Gresham had helped on the battlefield to write into that constitution the natural and inherent right of men, and he intended to urge on the living the importance to the race of the Republic of living up to these principles in domestic<sup>1</sup> and international relations. The mass of mankind

<sup>1</sup> See page 117.

"had not as yet learned that institutions are but ideas, and that those ideas, when overthrown, involve in their fall thrones and nations.

"Years and disease, pestilence and famine, never alter a man so much as the loss of power."<sup>1</sup> One gift the philosopher may concede even to the poor weak woman. Her instincts enable her to discern that force of character in certain of the other sex that make them dominant. I was brought into contact with many such men. I saw many of them lose their power not simply the power, that goes with official position and favors to give. That loss did not come to Walter Q. Gresham.

<sup>1</sup> Deveraux, vol. 2, p. 25.

## APPENDICES

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## APPENDIX A

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“THE errors we see in histories of our times and affairs weaken our faith in ancient histories.”<sup>1</sup> As bearing on this I submit a memorandum of a talk in 1891 which two lawyers had with Judge Gresham, supplied by William R. Plum, General Thomas’s Chief Telegrapher and author of a very interesting work, “Telegraphy of the War.” He became a lawyer and a good one.<sup>2</sup>

Friday, February 26, 1891, Showalter (J. W.) and myself called on Judge Gresham at his chambers in relation to the suit of Keeler *vs.* Reynolds. From that our conversation soon drifted to war matters, which we discussed for about an hour and a half, Gresham doing most of the talking. Among other things he said he was in command at Savannah when the battle of Shiloh began; that General Grant was in his tent when he first heard the cannon opening the battle. Both were smoking in quiet conversation when the sound of cannon came plainly down the river; that the steamer always had steam up and Grant promptly had his staff on board and started for Shiloh; that there was no sort of doubt but Grant was taken by surprise; the Judge knew he was. He had carefully noted what the General says in his book, and though he does not say in so many words that he was not surprised yet he does leave that inference, which the Judge says was an unfair one. He further said that Sherman was back on the Ohio (Paducah, I think he said) when Grant ordered him to report to him, that the order was not warranted because Sherman was expected to remain where he was until released by the War Department, but Grant boldly ordered him to the front, and it was important as Sherman was somewhat under a cloud then to shield Sherman; that Grant had done more than any other man would have done to do that; that Grant had in apt time before the battle ordered Sherman in writing to reconnoiter in his front until he felt the enemy; that Sherman had reported on that order before the battle

<sup>1</sup> Franklin's Biography, vol. 3, p. 203. <sup>2</sup> See page 183, on the Battle of Shiloh.

and Grant was not anxious for fear of an attack that it would be interesting to have those two papers; that Colonel Worthington charged a surprise and published a pamphlet to that effect; that that was just the course Sherman would have (or did) prefer Worthington to take; that it enabled Sherman to arrest Worthington and try him by court martial; that that was what Worthington expected and wished, as he intended thereby to prove the facts of a surprise. but Worthington, though a very bright old army officer, was not a lawyer and did not know or appreciate that he would be tried for insubordination; that the course Worthington should have taken would have been to prefer charges against his superior officer and thus raise the question of surprise fairly and legitimately; that Gresham was one of the officers appointed by Sherman to try Worthington; that there were (I think he said) fifteen officers in all in the court; that one of the first objections made was that Sherman could not prefer charges and designate the court; that that question was argued, but he was the only member of the court that voted to sustain the objection. It seemed to him then and ever as contrary to our institutions to allow such a thing. He spoke of other members who were lawyers by profession, and who must have known better than to have voted against the objection. Speaking of the battle itself, he said that in the Worthington trial Sherman testified that Grant rode over to Sherman and said, "How is it going?" "Bad enough, bad enough, bad enough," said Sherman; that he looked at Grant and found him so unperturbed that he, Sherman, took fresh hope; that Grant said he would hold his own, keeping the enemy at bay the rest of the day; that at night the enemy would be in possession of his camp and be in no shape to resist an early attack in the morning, when Grant said we would pounce on them and drive them pell-mell; that such was his plan and it would have been successful even without Buell's help.



## APPENDIX B

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THE following is an abstract of a speech delivered at New Albany, Indiana, October 4, 1864, by Colonel John M. Harlan, afterwards Justice of the United States Supreme Court, from which we have quoted on page 347. It shows better than anything the opposition there was in the South to the Abolitionists and how the Union pro-slavery men of Kentucky turned against Mr. Lincoln on the negro question, and is in strong contrast with the utterances of Associate Justice Harlan.

Colonel Harlan took the stand and delivered one of the best speeches of the campaign. We are furnished with the following abstract, which is but a faint outline of his remarks.

He commenced by referring to the time when Kentuckians came to the rescue of Indiana, when the people were threatened with destruction by the merciless savage.

Years rolled by, and when Kentucky was invaded by the armies of the rebellion, Indiana came to the rescue.

The first regiment which came to Kentucky from a free State was the Sixth Indiana under Colonel Crittenden. The last which came was the glorious band of Braves composing the Tenth Indiana, then commanded by Colonel — afterwards General — Mahlon D. Manson, now Democratic candidate for lieutenant-governor.

He referred to the intimacy and cordial feeling which existed in the army between the soldiers of Indiana and Kentucky. They mingled as brothers, and have fought side by side upon many battlefields in this bloody civil war. The interests of the people of Indiana and Kentucky were identical, their destiny should and he believed would, be the same. For his own part he would never consent to see Kentucky and Indiana separated and living under different hostile governments.

He then alluded to the contest of 1860, resulting in the election of Abraham Lincoln as President — an event which, while it afforded no occasion for the dissolution of the Union, gave an

opportunity to bad men of both sections to excite sectional feeling and disrupt the Union. That party should never have triumphed, because it was based upon the single idea of hate and hostility to the social institution of one section of our country; its candidate having been elected in accordance with the Constitution, he was entitled to be respected as President.

The disunionists of the South, however, were not content to await the slow process of the ballot box. They fired upon the flag of the United States and then aroused the entire people of the North, including those who felt and believed that the Abolitionists could have averted the terrible calamity of civil war had they been actuated by that spirit of conciliation and compromise in which the Constitution was framed by our Fathers.

But for what purpose did the people of the North rise as one man? It was to maintain the Union, and the Constitution which was the only bond of that Union. It was for the high and noble purpose of asserting the binding authority of our laws over every part of this land. It was not for the purpose of giving freedom to the negro. He referred to the Crittenden resolutions as indicating the unanimous opinion of Congress as to the object of the war, so far as the people of the loyal States were concerned.

Mr. Lincoln has in disregard of the then declared purpose of the nation changed and perverted the character of the war. He is warring chiefly for the freedom of the African race. He will not be content with simply re-establishing the authority of the Constitution and restoring the Union.

He will not accept peace upon any terms which do not embrace the abandonment by the South of its local institutions. The purpose he has in view is impossible of accomplishment. He can not restore the Union that way. The war will be almost interminable upon such basis. The Rebel army may be crushed and dissipated, but under the policy of Mr. Lincoln the Union can never be restored in the hearts and affections of the people of the South.

The original policy of the war was the true one, and had it been adhered to, we would ere this have built up a peace party in the South which would have paralyzed the efforts of bad men there, who, in connection with their Abolition *confrères* in the North, have brought this terrible civil war upon us.

Common sense would seem to have dictated that in the management of this great rebellion our national authorities should have so acted as to produce a rupture between the people South and their wicked leaders. He also reviewed and criticized Mr. Lincoln's plan of reconstruction. That plan, if it prevailed, would work a civil revolution in our system of government. Mr. Lincoln has in that respect assumed unlimited and unconstitutional powers. He holds and exercises the power to subvert State government, and he even prescribes the terms upon which people may vote.

A loyal man in Alabama, who has been true to his country and has been a soldier in the War of 1812 and the Mexican War, could not vote in re-establishing civil authority in the State unless he would first take Lincoln's oath to become an Abolitionist. The triumph of abolition would be the triumph of a spirit which in order to effect its purpose would not hesitate to trample upon constitutions and laws with impunity. There is no safety in this land of ours except in rigid adherence to law — no safety for life, liberty, or property.

In opposition to this fundamental principle Lincoln says he has the right to disregard the Constitution in whole or in part — to whatever extent he pleases — whenever he deems it necessary to take the notion.

He referred to McClellan, his life record, etc.; demonstrated that he was the representative of that spirit of conservatism that respected the Constitution and the laws.

He had adhered to the Constitution in whatever position he had been placed.

He would never consent to a dissolution of the Union, but if elected would so exert the power of the nation as to give us peace — peace with an unbroken Constitution, peace upon the basis of the Union of our fathers.

Lincoln commenced with a united North and a divided South. He now has a divided North and a united South.

Colonel Harlan in conclusion said he was an unconditional Union man, unconditional for the Union and the Constitution.

An Abolitionist is for the Union on condition that slavery is abolished. A Secessionist is for the Union — if at all — only on condition that slavery is preserved.

## APPENDIX C

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THE following letters form the major part of the correspondence in connection with the threats of Governor Oliver P. Morton to have Colonel Walter Q. Gresham dismissed from the army. The copies of letters of Samuel J. Wright, the enrolling officer, to Colonel Gresham, Colonel Gresham's letters to Governor Morton, and to General Cravens, a member of Congress from Indiana, I lost because certain Union veterans thought they should never be printed. Destroying records is one of the ways of perverting the facts of history. Some place in the archives of the War Department, there may be copies of these letters, but I have never been able to get them.

HEADQUARTERS, 16TH ARMY CORPS,  
MEMPHIS, February 14, 1863

BRIG.-GENL. L. THOMAS,

ADJ.-GENL. U. S. A.

GENERAL:—

I have the honor to enclose you a copy of a letter from His Excellency Governor Morton of Indiana to Colonel W. Q. Gresham, Fifty-third Indiana Infantry, a part of my command, and to request that the attention of the Secretary of War may be called to it.

Without any reference to the misunderstanding between the Governor and Colonel Gresham, I desire simply to say that there appears too much of a disposition on the part of His Excellency to consider the officers and soldiers furnished by the State for the service of the United States as within control of the State executive as to military rewards and punishments, and that this is a growing evil tending to break up proper subordination and respect to their military superiors. The threat included in the last paragraph is an assumption of power.

Colonel Gresham has served under me for a year past, and I have always found him a capable, brave, and energetic officer, in no wise deserving the language contained in this letter.

Very respectfully, your obdt. servt.,

S. A. HURLBUT,

Major-General, U. S. A.

Commanding Sixteenth Army Corps.

WAR DEPARTMENT.

A. G. O. February 25, 1863

Respectfully submitted to the General-in-Chief.

THOMAS M. VINCENT,

Asst. Adjt.-General.

No action seems to be required in this case. The evil referred to by General Hurlbut tends to destroy all efficiency and discipline of the army.

H. W. HALLECK,

February 26, 1863.

General-in-Chief.

*(Inclosure)*

EXECUTIVE DEPARTMENT, INDIANAPOLIS,

February 4, 1863

COLONEL W. Q. GRESHAM,

SIR:—Your letter is at hand and confirms the impression before entertained of your purpose and character. If, as you say in your letter, you are desirous of serving your country, you can best do so by resigning the office you hold.

A reasonable time will be given you to do so.

Respectfully,

(Signed) O. P. MORTON.

I certify that the above is a true copy,

W. Q. GRESHAM,

Colonel 53d Indiana Volunteers.

The following are some of the protests that went to President Lincoln against the threat of Governor Morton to have Colonel Gresham dismissed.

TO HIS EXCELLENCY, ABRAHAM LINCOLN,  
PRESIDENT UNITED STATES OF AMERICA.

SIR:—Understanding that an effort is about to be made by Governor Morton of Indiana to procure the dismissal of W. Q. Gresham, Colonel Fifty-third Indiana Infantry, from the service, I feel it no less a duty as a lover of my country, respectfully to petition against the dismissal of so valuable an officer, than a pleasure as an admirer of Colonel Gresham, to bear testimony to his high merit as a gentleman, an officer, and a patriot.

The cause of this effort on the part of Governor Morton, I am reliably informed, is a personal difficulty between himself and Colonel Gresham which has grown out of a private correspondence—a copy of which will be sent you—and not from any failure on the part of the Colonel to perform his *whole* duty to the *entire* satisfaction of all with whom he has been connected.

Since the Battle of Shiloh I have been intimately associated with the Colonel, eight months of the time in the same brigade and all the time in the same division with him; and at all times, whether on the march, in camp, or in the field, I have found him *prompt, faithful, and efficient*. He is intensely loyal and has promptly endorsed all measures of the government for crushing this unholy rebellion, adopting as his motto, "Right or wrong, always my country."

His dismissal from the service would not only wrong him, but do great injustice to his regiment, and rob our country of the services of one of her most ardent supporters whose ability as an officer is equaled by few and surpassed by none in the volunteer service.

Hoping that neither the honor of a true man, the reputation of an able officer, nor the interests of the cause so dear to us all, may be sacrificed for the gratification of personal spleen, I am, with profoundest regard,

Your most obedient servant,

CYRUS HALL,  
Colonel Commanding 2nd Brig.  
4th Divis. 16th Army Corps.

LAFAYETTE, TENN., February 14, 1863

TO HIS EXCELLENCY,

ABRAHAM LINCOLN, PRESIDENT UNITED STATES.

Having learned incidentally that some misunderstanding exists between Governor Morton of Indiana and W. Q. Gresham, Colonel of the Fifty-third Regiment, Indiana Volunteers Infantry, and that in consequence of said misunderstanding an attempt may be made to have Colonel Gresham dismissed from the service of the United States,—

I therefore beg leave most respectfully to say that I have been acquainted with Colonel W. Q. Gresham, have been intimately associated with him, and have had the very best opportunity to know him as a gentleman and officer during the last ten months.

I am therefore happy to have this opportunity to testify as to *his undoubted loyalty and eminent ability as an officer*. He has always during our acquaintance shown himself to be one of the most worthy, competent, and efficient officers in the Brigade. The service and the regiment would suffer an irreparable loss by his dismissal from the service, which would be considered very unjust and would be greatly deplored by all who know him. With assurance of my highest regard, I have the honor to be

Very respectfully, your obedient servant,

B. DORNBLASER,

Col. 46th Ill. Vol. Infy.

LAFAYETTE, TENN. February 14, 1863

TO HIS EXCELLENCY, ABRAHAM LINCOLN,

PRESIDENT OF THE UNITED STATES OF AMERICA.

SIR:—A personal difficulty having arisen between Governor Morton of Indiana and W. Q. Gresham, Colonel Fifty-third Regiment Indiana Infantry, and the Governor intimating, in a recent note, that if Colonel Gresham does not, within a given period, tender his resignation he, Governor Morton, will take steps to procure his dismissal from the service, the Colonel desires the testimony of the officers with whom he has associated since entering the service.

I feel it my duty as an officer, as a soldier, and a patriot, to bear witness to the loyalty, gentlemanly bearing, and the faithful

efficiency of Colonel Gresham. We have been in the same brigade since the commencement of the advance upon Corinth last spring, until within a few weeks past, and the dictates of honor, duty, and zeal for the cause compel me to protest against the dismissal of Colonel Gresham at least without a hearing before a proper tribunal.

Respectfully,

WILLIAM CAM,

Lt. Col., Comdng. 14th Ill. Inf.

HEADQUARTERS 15TH ILL. VOLUNTEER INFANTRY

LA FAYETTE, TENN., February 15, 1863

TO HIS EXCELLENCY, PRESIDENT LINCOLN,

WASHINGTON, D. C.

It is with extreme regret that I learn that an effort is being made by Governor Morton of Indiana to procure the dismissal of gallant Colonel Gresham of the Fifty-third Indiana Volunteer Infantry.

Having belonged to the same brigade (2d Brigade, 4th Division) with Colonel Gresham for a long time, I take great pleasure in testifying to his good conduct on every occasion, and to his many meritorious actions; and I would enter, if I may be allowed the expression, my earnest protest against his being disgraced.

I think he should be promoted instead of being dismissed from the service.

Respectfully, your obedient servant,

GEORGE C. ROGERS,

Col. Commdg. 15th Ill. Vol. Inftry.

CAMP OF THE 53D REG. IND. VOL. INFTRY.

COLLIERVILLE, TENN., February 15, 1863

TO THE HONORABLE ABRAHAM LINCOLN,

PRESIDENT OF THE UNITED STATES.

We, the undersigned, officers of the Fifty-third Regiment Indiana Volunteer Infantry, learning that Governor Morton of the State of Indiana either has exerted or intends exerting his influence to bring about the dismissal of Colonel Walter Q. Gresham from the service of the United States, most respectfully



represent that for the past twelve months we have been associated with, and under the command of, the said Walter Q. Gresham, and that it is our united opinion that but few regiments in the service are more ably commanded or better disciplined. We further represent that the said officer is thoroughly loyal and devoted to the cause of the Union and the preservation of the government of which you are chief executive. We also further represent that, in our opinion, the dismissal of Colonel Gresham would be a calamity to our regiment and to the great detriment of the service of the United States, and we do most earnestly hope that all efforts to get him out of the service may be unsuccessful.

The foregoing statements we make on honor.

We have the honor to be,

Most respectfully, your obedient servants,

JAMES A. HUDSON, *Adjutant*  
 M. H. ROSE, *Assistant Surgeon*  
 GEORGE THOMEAS, *Quartermaster*  
 W. L. VESTAL, *Captain Co. A.*  
 L. B. SHIVELY, *Captain Co. F.*  
 SETH DAILY, *Captain Co. D.*  
 JOHN GIBSON, *Second Lieutenant, Co. D.*  
 WM. S. LANGFORD, *Captain Co. I.*  
 JOHN W. MARSHALL, *Captain Co. C.*  
 E. D. PUTNEY, *First Lieutenant, Co. H.*  
 H. B. WAKEFIELD, *Second Lieutenant Co. A.*  
 THOS. N. ROBERTSON, *Second Lieut. Co. D.*

GEORGE H. BEERS, *Captain Co. E.*  
 R. M. GIBSON, *First Lieutenant Co. E.*  
 WM. H. SMITH, *Second Lieutenant Co. E.*  
 M. McDONALD, *First Lieutenant Co. K.*  
 JNO. VESTAL, *Second Lieutenant Co. K.*  
 JOSEPH WHITAKER, *Captain Co. G., 53d.*  
 JOHN DONNELLY, *First Lieutenant Co. G., 53d.*  
 M. FITZPATRICK, *Second Lieut. Co. G., 53d.*  
 ANDREW M. JONES, *Captain Co. B., 53d Ind.*  
 A. H. FABRIQUE, *First Lieutenant Co. B.*  
 WM. REAUGH, *Second Lieutenant*  
 R. C. SLAUGHTER, *Surgeon 53d Reg. Ind.*

I certify, on honor, that the above list contains the names of all commissioned officers now present with the regiment.

W. L. VESTAL,

The above is a true copy.

Captain Company A.

JAMES A. HUDSON,

Adjt. 53d Indiana Volunteers

COLLIERVILLE, TENN., February 16, 1863

TO HIS EXCELLENCY, ABRAHAM LINCOLN,

PRESIDENT OF THE UNITED STATES.

Sir:—I regard Colonel Gresham, commanding the Fifty-third Indiana Volunteers, as one of the *best* colonels in the service, *loyal* and true, an officer who loves his country and his country's honor more than he loves men or party, and the country has no braver or truer man in its service. He is deservedly popular in his

regiment, brigade, and division, and commands the respect and admiration of all who know him. He is a Republican in politics, and as a true man is opposed to Copperheads and all who affiliate with them. He is in earnest in his endeavors to help crush out this rebellion. I commend him as a soldier that is safe to trust

Your obedient servant,

GEORGE E. BRYANT,

Col. 12th Reg. Wis. Vol.

HEADQUARTERS 28TH REGT. ILL. INFTRY.

COLLIERVILLE, TENN., February 16, 1863

Having learned with regret that His Excellency, Hon. O. P. Morton of Indiana, has threatened and is now probably making an effort to secure the dismissal of W. Q. Gresham, Colonel of the Fifty-third Regiment Indiana Infantry Volunteers, from the service by the President; feeling and knowing as I do that if the Governor should succeed in his effort that then our country and cause would be deprived of one of its most true, faithful, and loyal officers whose place could never be supplied by a better and more efficient officer; I deem it my duty in justice to my country as well as to a worthy officer to protest earnestly against the same.

Having served for a long time in the same brigade with Colonel Gresham and being well acquainted with him, I can say of my own knowledge that he has always conducted himself in an honorable and gentlemanly manner, has performed the duties of his office with credit to himself and country alike, and proved himself most devotedly attached to the best interests of our common country.

RICHARD RITTER,

Lieut.-Col. Commdg. 28th Reg. Ill. Vol.

HEADQUARTERS 25TH REGT. IND. VOL.

MEMPHIS, TENN., February 14, 1863

HON. E. M. STANTON, SECRETARY OF WAR,

WASHINGTON CITY.

The honor of a brother officer being in jeopardy, I have concluded, in order that so sad a calamity may be averted, to respect-

fully and earnestly solicit a hearing in his behalf. I will be brief and to the point at once. It appears that a misunderstanding is existing and has existed for some time between His Excellency Governor Morton of Indiana and Colonel W. Q. Gresham of the Fifty-third Regiment Indiana Volunteer Infantry.

This difficulty, which I understand to be of a strictly private nature, has progressed to such an extent that His Excellency the Governor has presented him, the Colonel, the choice of resigning his commission or of submitting to a dishonorable dismissal from the service. The Colonel desires, as does every patriot and soldier, to continue in the service and in the position which he now fills with so much ability, that he may the better discharge the duty which he owes to his country; and he simply asks, as an act of simple justice, that he may not be disgraced in the eyes of the world on account of the difficulty, strictly private in its character, of little if any importance, and with a gentleman in civil life.

It affords me great pleasure to be able to state, and upon the honor of an officer and a gentleman, that the Colonel is an undoubtedly loyal man, an unflinching and devoted patriot, and an officer of whose ability to correctly and properly discharge the duties of his office there can be no doubt; and I do further humbly request that he may at least have a fair trial before a calamity so great shall befall him.

Believing that justice will be done him, I have the honor to be, Sir,

Most respectfully your obedient servant,

WILLIAM H. MORGAN,

Col. 25th Regt. Ind. Vol.

#### DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C., February 28, 1863

SIR:—The enclosed papers were sent to me by the friends of Colonel Walter Q. Gresham, of the Fifty-third Regiment of Indiana Volunteers.

I have known the gentleman from his boyhood, and can, with perfect sincerity, declare that I do not believe that there is in the military service a more gallant officer, a better man, or a truer gentleman.

I am perfectly cognizant of his efficient and successful labors in raising portions of two regiments since the breaking out of this rebellion.

I anxiously trust that if any attempt should be made to procure the summary dismissal of Colonel Gresham from the service, the inclosed papers from his brother officers may receive the consideration they justly merit.

I am, Sir, very respectfully,

Your obedient servant,

W. T. Orto,

HON. EDWIN M. STANTON,  
Secretary of War.

Asst. Secretary.

*(Confidential)*

HEADQUARTERS, POST NATCHEZ, MISS.,

November 1, 1863

GENERAL:—I have been admonished by some of my friends that an appointment as brigadier-general is not always confirmed by the Senate. I once explained to you the nature of a difficulty I had with a few of the politicians of Indiana who may think that now is the time to strike me. If such opposition should be made, I could easily silence it by agreeing to certain things which I think involve my self-respect and manhood, and which I cannot do. I have no fears of trouble from the Senators from Indiana, for they will both vote for me, but Governor Morton might work against me if he thinks he can do so secretly.

You know I never sought promotion, and General Grant, and I don't know who else, presented my name without my knowledge, which I confess is gratifying to me.

If politicians had forced me on the army as brigadier-general I would have no right to think hard if the Senate should refuse to pass me, but inasmuch as I was promoted on the recommendation of my commanding officers, unsolicited on my part, I think it would be hard to be rejected and disgraced. I would infinitely prefer being killed in action.

I have always felt free to approach you for advice, and I therefore drop you this note. Your brother, Hon. John Sherman, I know has as much, if not more, influence than any other man in the Senate, and I should like very much to have him understand

my case. If you think it necessary to drop him a note on the subject you will place me under renewed obligations by doing so.

I shall always feel grateful to you, for I feel that I am indebted to you for my promotion.

I am commanding the Third Brigade, Fourth Division, Seventeenth Army Corps. I also have charge of the Post, but I would very much prefer being with you in the field.

I am, General,

Very truly your friend,

W. Q. GRESHAM,

MAJOR-GENERAL W. T. SHERMAN,

Brig.-Genl.

Commanding Twenty-fifth Army Corps.

HEADQUARTERS DEPT. ARMY OF THE TENNESSEE,

BRIDGEPORT, November 18, 1863

HON. JOHN SHERMAN,

WASHINGTON, D. C.

DEAR BROTHER:—W. Q. Gresham has been properly appointed a brigadier-general of the army by the President. He writes me from Natchez saying that it is possible certain Indiana influences may be brought to bear against his confirmation.

I know he has earned this appointment and should be confirmed. He was lieutenant-colonel of an Indiana regiment that joined me on Muldroughs Hill in Kentucky, and early attracted my attention. I subsequently found him in Mississippi commanding another regiment, and had General Grant's promise to transfer him to my corps in order that I could advance him, but General Ord, in whose corps he was, would not spare him, and promised me he would urge his promotion, which he did, and Gresham is now a brigadier-general, and only fears some old political combinations may stand between him and confirmation. I ask you to make a note of his name. I pledge you my word he is a fine gentleman and bids fair to be an elegant soldier. You know I judge of men on the field, and there is where Gresham is and has been. He too is of that modest school that strives to deserve advancement by work and not heralding his heroism in the journals of the day. I send this letter through him, and anything he adds to it, I indorse.

Affectionately, etc.,

W. T. SHERMAN,

Major-General.

## APPENDIX D

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THE following is the letter in full, of Richard Olney, which is alluded to in Chapter XLVII on the Hawaiian affair.

(*Private*)

DEPARTMENT OF JUSTICE

WASHINGTON, D. C., October 9, 1893

HON. WALTER Q. GRESHAM,

SECRETARY OF STATE.

MY DEAR JUDGE:—The Hawaii business strikes me as not only important, but as one that may require great delicacy in the handling.

There is no question, it seems to me, that a great wrong was done under the auspices of United States Minister Stevens when the regular constitutional government of the queen was supplanted and the present, so-called, provisional government installed in its stead.

There is no question either, I think, of the good sense, the statesmanship, and the sound morality of your proposition that this great wrong should be rectified, and that to rectify it the *status quo* at the time of its perpetration must as far as possible be restored.

The queen's government was overthrown by an exhibition of force. If it can be reinstated by a like exhibition of force without actual resort to it, there is not, it seems to me, any real ground for hesitation. Whether the exhibition of force in each case be or be not a technical act of war, the undoing of the original wrong by the same means by which it was consummated would hardly be criticized in any quarter and would probably be universally commended as an act of substantial justice. It would be the short and ready way out of the complication if the Stevens government were a thing of a few hours' or even a few days' existence.

But the present situation is not so simple. The queen has been in our hands, and the Stevens government has been in authority with our acquiescence for many months. All parties

have been awaiting the action of the United States. In the interim the Stevens government has had complete possession of the country and all its resources, and may have acquired such control of them and such ascendancy over the inhabitants that it can be displaced only by actual force and after more or less loss of life and destruction of property.

In any event, and whether the Stevens government will be fought for or not, it has in this interval been receiving the revenues of the country, collecting the taxes, administering justice, and enforcing the laws, and generally exercising all the functions of a legitimate government.

This being the situation, let the worst be assumed; namely, that as a matter of fact, the Stevens government cannot be ousted except by the application of superior military force. To that course there are, it seems to me, various formidable objections. One is, that a resort to military force would be clearly an act of war, however righteous the cause, and would be beyond the President's constitutional power. Another is, that to hand over to the queen's government a country more or less devastated and a people more or less diminished in number and alienated in feeling by a contest of arms, would produce a result that would be but a poor substitute for that peaceful control over an uninjured territory and undecimated population which the queen's government enjoyed at the time of United States Minister Stevens' lawless intervention in its affairs.

Still another, and to my mind, an insuperable, objection, is this: The Stevens government will not be fought for unless its adherents are sure of a strong backing not merely in warlike force, but in the intelligent public sentiment both of Hawaii and of this country. If such sentiment has grown up and now exists in Hawaii—and we know to how large an extent it prevails in this country—the administration in undertaking to reinstate the queen's government by force of arms would be open to the reproach of sacrificing the interests of the country and its people to the interests of the queen's government and her dynasty. It would not be sufficient to urge that the queen's government had been unlawfully deposed by the United States, and that they were merely endeavoring to right that wrong. The answer would be that the queen and her government were not the only and first

things to be considered; that the paramount objects of our care should be the people of Hawaii and their interests; that we have no right to redeem the original wrong by the commission of another still greater wrong, to wit, the imposition on Hawaii of a government not wanted by its people; and that if through their experience of the Stevens government, or otherwise, the people of Hawaii are now sincerely opposed to any restoration of the queen's government, the United States would have no right to insist upon such restoration, but must find some other means of compensating the queen and all others immediately injured by the unlawful setting up of the Stevens government.

The above suggestions are not made because serious resistance by arms to anything the United States may do in Hawaii is to be reasonably anticipated. It is wholly unlikely. At the same time it is the unexpected that proverbially happens in politics, and in shaping its present policy, the administration ought, so far as it can, to take into consideration every contingency, however remote. Let it now be assumed that any contest of arms by the Stevens government is out of the question—the administration in determining its course upon that theory can not, I think, properly lose sight of certain considerations of vital importance. The Stevens government is the lawful government of the country, and has been and is recognized as such by the United States and by foreign nations. However legitimate in its origin, it has since governed by the consent of all parties. It follows that its acts, unless shown to be *mala fide*, ought to be recognized as legal to all intents and purposes. It follows that all the officers of that government, from the highest to the lowest, ought to be exempt from any loss or punishment or from any fear of loss or punishment in consequence of their official actions. In my judgment, the honor of the United States is hardly less concerned in securing justice and fair play for the Stevens government and its members and adherents, than in the restoring to power of the queen's constitutional government. It must ever be remembered that the Stevens government is our government; that it was set up by our minister by the aid of our naval and military forces and was accorded the protection of our flag; and that whatever be the views of this administration, its predecessor practically sanctioned everything Minister Stevens took upon himself to do.



Under such circumstances, to permit the men who were Stevens instruments in this setting up and carrying on of the Stevens government, and who undoubtedly acted in good faith and in the sincere belief that Stevens correctly represented his government—to permit these men to be hung or banished, or despoiled of their estates, or otherwise punished for their connection with the Stevens government, or to leave them exposed to the risks of any such consequences, would, it seems to me, be grossly unjust and unfair, and would deservedly bring the government of the United States into great discredit both at home and abroad.

The practical conclusions I arrive at from the foregoing are these:

1. All the resources of diplomacy should be exhausted to restore the *status quo* in Hawaii by peaceful methods and without force.

2. If, as a last resort, force is found to be necessary—by force I mean an act or course of acts amounting to war—the matter must be submitted to Congress for its action.

3. In addition to providing for the security of the queen's person pending efforts to reinstate the Queen's government, and as a condition of making such efforts, the United States should require of the queen and any other legal representatives of her government full power and authority to negotiate and bring about the restoration of her government on such reasonable terms and conditions as the United States may approve and find to be practicable.

Among such terms and conditions must be, I think, full pardon and amnesty for all connected with the Stevens government who might otherwise be liable to be visited with the pains and penalties attending the crime of treason.

4. The negotiations above recommended would, I have no doubt, have a successful issue. It would be understood that the power of the United States was behind them, while there would be and need be no statement nor intimation of the necessity for the intervention of Congress, if it were found necessary to reënforce the negotiations by the use of the war power. The negotiations being in the hands of the United States, and it being known that it would insist upon fair dealing not merely for the queen's government but for all others concerned, the chief motive for

standing out on the part of the adherents of the Stevens government would be taken away. While in doubt as to the policy of the restored queen's government toward them, they would naturally be disinclined to consent to any change in the existing status. That doubt being dispelled and all apprehension of severe or vindictive measures toward them being removed, it is to be anticipated, I think, that they would readily follow the course recommended by the United States.

I trust you will not regard this as an unnecessary intrusion upon your time or an uncalled-for meddling with affairs especially in your care. Neither charge me in your thoughts with imagining that there is anything especially valuable in it or anything that would not occur to yourself. I write because of my general interest in the subject and because an expression of opinion from each member of the cabinet seemed to be invited last Friday. Wishing I had something better to offer, I am

Very truly yours,

(Signed) RICHARD OLNEY.

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